

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

UNITED STATES OF AMERICA) DOCKET NO. 3:22-CR-157
)
vs.)
)
DAVID TATUM,)
)
Defendant.)
)

TRANSCRIPT OF SENTENCING HEARING
BEFORE THE HONORABLE KENNETH D. BELL
UNITED STATES DISTRICT COURT JUDGE
NOVEMBER 8, 2023

APPEARANCES:

On Behalf of the Government:

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Official Court Reporter
United States District Court
Charlotte, North Carolina

1 P R O C E E D I N G S

2 THE COURT: The next matter is United States versus
3 Tatum, docket number 3:22-cr-157. Mr. Tatum was convicted
4 following a jury trial on May 4, 2023.

5 Mr. Tatum, the probation office prepared a
6 presentence report which the Court has received and reviewed.
7 Have you read that report?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: Do you understand what's in it?

10 THE DEFENDANT: Yes.

11 THE COURT: Have you had all the time you would like
12 to discuss it with your attorney?

13 THE DEFENDANT: Yes, I have.

14 THE COURT: All right. Mr. Ames, you have several
15 objections to the report so let's take them up in the order
16 that they appear in the presentence report. The first
17 being -- I guess you have an objection that would not affect
18 the guidelines. Well, let's just start with paragraph 33, the
19 application of 2G2.2(b) (2), the material involving a
20 prepubescent minor or a minor who had not attained the age of
21 12. Let me hear from you on that.

22 MR. AMES: Thank you, Your Honor.

23 So I think if we're considering the universe of
24 images and videos that would fall under this particular
25 section, I would say that it's in total -- or total candidates

1 that could apply to this section are there are four total
2 videos: The first being the one from the cabin in Maine; the
3 second being the one was titled "LS" that was on a bed between
4 two women; the other two were the webcam videos that were
5 found on a desktop computer that were seemingly a bit older
6 that involved two people. There were longer videos of what
7 looked like a webcam type of thing.

8 So starting with the videos, Your Honor, with
9 reference to this specific section, I think the video from
10 Maine we can exclude because it's pretty well established that
11 the victim in that case was 15.

12 The remaining three videos we do not have any
13 identified person. We don't know how old any of the people
14 involved in those videos were. And I wouldn't dispute that
15 there are sexual acts going on in those videos; however, this
16 enhancement is based on age. We do not have any corroboration
17 of how old they are. We don't know their dates of birth. We
18 don't know who they are. So we're beholdng to making
19 estimates, I suppose.

20 THE COURT: Well, let me ask you about that because
21 the enhancement applies if the person involved has not yet
22 attained 12 years of age or is prepubescent.

23 MR. AMES: Yes, Your Honor.

24 THE COURT: So can't the Court view the images and
25 determine whether the person depicted is prepubescent?

1 MR. AMES: I suppose the Court can, Your Honor,
2 but --

3 THE COURT: Isn't that what I have to do? I'm not
4 begging to do that, but you've put me in a position where I
5 have to because the Court has to determine whether any of
6 these images depict prepubescent minors.

7 MR. AMES: And, Your Honor, the problem that I run
8 into with this particular section is there's no definition for
9 prepubescent; and that may sound silly, but there isn't. So
10 puberty, or when a person hits puberty, is not a definitive
11 line the way an age is. It's different for different people.

12 It's also not clear if it means -- what does it
13 mean? Does it mean you've got to the end of puberty? Does it
14 mean literally before you have any indicia of any puberty?
15 And what is the evidence of being prepubescent versus
16 postpubescent or going through it? I imagine it might be
17 secondary sexual -- or functions and such and, you know,
18 growing body parts and all the rest. But determining that
19 without really a definition -- and I haven't found any
20 particular good case law, to be frank with you, Your Honor,
21 that --

22 THE COURT: Well, there are many definitions of it
23 both in dictionaries and in medical journals, which the Court
24 researched some yesterday. And it's essentially if there is
25 no physical indication of the onset of puberty, which in the

1 case of females is no breast development, no widening of the
2 hips, no pubic hair. Those are the three largest indicators,
3 although not the only.

4 And so as you say -- and I also could not find, at
5 least in the Fourth Circuit, any case law that says here's
6 what courts should look at to determine whether the images are
7 of a prepubescent minor. But I do think that the dictionary
8 definitions and the medical definitions give the Court
9 sufficient guidance.

10 So if you insist, I will view those images, although
11 my memory from the trial is there were no indications of the
12 onset of puberty of the girls who were shown in that I think
13 it was approximately 9-minute video on the bed. But if you
14 want to press the point or if you want to argue to me that
15 there are indications of the onset of puberty, we can do that.

16 MR. AMES: Your Honor, it's -- well, at a minimum I
17 think that the versions or clips played at trial were, of
18 course, truncated and shorter versions. Whether or not there
19 are indicia and whether or not it's something that is clearly
20 known -- for instance, I believe in a significant portion of
21 the webcam videos, they're mostly videos of them being topless
22 and having underwear on, to my recollection.

23 THE COURT: Mostly doesn't matter.

24 MR. AMES: I understand that, Your Honor. I say
25 that to say that it's -- even viewing it -- particularly we're

1 talking about some older videos that are grainy or whatnot
2 with a webcam that are harder to see things. And I think it's
3 a difficult determination with no guidance.

4 And when -- I have also done the research and
5 looking into, like, the purpose of adding that in because it
6 was added in about 1991 to this framework. And in essence,
7 what it -- I was able to glean from the legislative records
8 and comments and whatnot was that this was so that in a
9 circumstance, I guess, like this where we don't know the age
10 of a person, it gives the ability to at least have this
11 guideline apply when someone is very much under the age of 12.

12 THE COURT: Well, that's fine for you to say.
13 That's not the law. It's not very clearly prepubescent or
14 much below adolescence. That's not what the guidelines and
15 the statute say, so let's stick to what the law actually is.

16 And also, while we're on this topic, what about the
17 modified images created from teengallery.com; wouldn't those
18 also be subject to consideration for the enhancement?

19 MR. AMES: They may, Your Honor. I mean, I would
20 say similar situation. We don't know who those people are.
21 We don't know --

22 THE COURT: Same answer. Look, your arguments are
23 heard when they're made. They're not heard any better or more
24 persuasively the fifth time you say them.

25 MR. AMES: Well, with respect to Teen Gallery, as

1 the name implies, it's presumably a website where there are
2 images of teens which would imply 13 as the age range.

3 THE COURT: It's the Deepfake modification that
4 would render them child pornography, right, of a prepubescent
5 minor?

6 MR. AMES: Yes, Your Honor, I understand. The AI
7 portion of it, whether or not it rendered -- well, whether or
8 not it rendered -- I guess we basically have to be in a
9 situation where that -- those images, I guess, didn't render
10 visible breast development, didn't render the other -- you
11 know, hips and the other things that you mentioned. I mean,
12 my recollection of those, they all had breast development in
13 those and that's generated by the AI. So I think the
14 enhancement could apply to someone who's under -- who's 11 or
15 younger if the person is that age. If the person is -- it's a
16 good question, actually, whether --

17 THE COURT: Let me cut to the chase here.

18 Mr. Cervantes, does the government intend to present
19 to the Court these images for its determination of whether
20 they're prepubescent?

21 MR. CERVANTES: We're prepared to do so, Your Honor.
22 The Court can rely either on its memory of what was presented
23 at trial or I could play it and remove all doubt right now.

24 THE COURT: Well, the Court's memory is pretty clear
25 with respect to the video and the modified Teen Gallery

1 images, that at least some, and I think it was essentially all
2 that were put into evidence, I don't know about what was in
3 the entirety, were all prepubescent showing no indicia of the
4 onset of puberty.

5 Now, Mr. Ames, if you want the Court to look at
6 something and argue that based upon what the Court is looking
7 at, there is evidence that puberty is onset, the Court will
8 look at any exhibit for which you want to make that argument.

9 MR. AMES: If I can have one second, Your Honor.

10 (Counsel and defendant conferred.)

11 MR. CERVANTES: Your Honor...

12 THE COURT: Yes.

13 MR. CERVANTES: If I may also add just in terms of
14 the definition of prepubescent, while the government agrees
15 with everything that the Court said, there is some guidance at
16 least in the statute. The statute, 18 U.S.C. 2252A(b) (2),
17 where it describes the penalty for possession of child
18 pornography, it says that when the offense involves a
19 prepubescent minor or a minor who had not attained 12 years of
20 age. I think there, at least, Congress is giving us some
21 indication about what prepubescent means.

22 THE COURT: Well, it's not particularly helpful
23 because, again, when I was doing some reading yesterday for
24 females, puberty generally is anywhere from 9 to 13. So
25 that's not a lot of guidance either. That's why I'm sure the

1 statute says and the guidelines say but we're going to
2 definitely draw the line at 12, whatever is happening with
3 puberty.

4 So the problem with -- and the Court's -- you know,
5 unless it's obvious, the Court is uncomfortable looking at the
6 face and saying, okay, prepubescent, over and done.

7 And I think in your response to the objections to
8 the draft presentence report, you argued that one of the
9 witnesses -- and I think this is with respect to the photo of
10 the four girls that had been doctored -- that she had
11 testified that they were all prepubescent minors. She didn't
12 say that. I'm looking right here at the transcript. She did
13 estimate their ages, one of which was as young as 10, which is
14 probably prepubescent but not medically necessarily
15 prepubescent, which is why I want to focus on the images
16 themselves. We don't have to guess. We can look at the
17 images.

18 I have looked at the images and am of the strong
19 opinion, well beyond a preponderance of the evidence, that
20 those images show no onset of puberty. But if you want to
21 show me one and say -- tell me why I'm wrong, I'll do that.

22 MR. AMES: Well, Your Honor, I mean, I would have to
23 show you all of them and convince you of all of them, I
24 suppose, for the guideline not to apply.

25 THE COURT: Well, you know the ones that the

1 government is relying upon. So if you want to -- if you want
2 to knock them down one at a time --

3 MR. AMES: I'm sorry, Your Honor, but I'll just --
4 even in their response what I'll note -- and I understand the
5 Court's argument and position on the prepubescent portion of
6 it. But in their own response they say the Passport contains
7 a video of child pornography, two naked minor girls
8 approximately 11 to 13 years old.

9 THE COURT: Which is only half the consideration.

10 MR. AMES: I understand, Your Honor. But the
11 approximation that's been given by the government itself is
12 these are either 11, 12 or 13, and they're not sure which, in
13 that range. And so --

14 THE COURT: Let's try this again, Mr. Ames. I'm not
15 basing this on the age, although I could certainly with
16 respect to the one who was testified to have been 10 years old
17 because that is under 12. The others were either -- either 12
18 or 13, so that's not helpful, or clearly above 12. But the
19 Court could easily go with the testimony that was not
20 controverted that at least one of the girls in the photo that
21 was modified was 9 or 10. Okay. Well, that gets us below 12.

22 MR. AMES: Well, Your Honor, I would dispute that
23 being the case. The -- again, these are also estimates of
24 somebody that was recalling when a photograph was taken from
25 approximately 15 years ago when they were younger, and that's

1 the basis for it. There was nothing corroborating: I know I
2 was in this grade because of this. I know it was 1996.

3 THE COURT: Oh, no, that's exactly how she did it.
4 That's exactly how she dated the photos. She remembered what
5 age she was, where she was in school at the time the photo was
6 taken and then backed up from there. And lest you are arguing
7 that she should not be credited or found credible by the
8 Court, the Court does find her credible; that her estimates
9 are accurate and reliable.

10 And again, one of the frustrations the Court has had
11 in this case is that we keep going around and around the same
12 things, making the same arguments without actually getting to
13 the point. So let me try this one last time.

14 Mr. Ames, are there any of the images that the
15 government relies upon for this enhancement that you say show
16 indicia of puberty?

17 MR. AMES: I think that either -- that they may or
18 it may be unclear, but, again, Your Honor, I don't know the
19 definition -- I don't know what the definition is.

20 THE COURT: Okay. Let's just stop here.

21 The Court finds -- well, let me ask the government
22 this first. What consideration can the Court make of the file
23 paths that were in the folders? I know that the videos
24 themselves were not recoverable, but there were, I think, tens
25 of thousands of file paths in a folder that were clearly

1 related to under 12 child pornography. Can the Court make any
2 consideration of those?

3 MR. CERVANTES: I think the answer -- I think the
4 answer is no, Your Honor, because that -- that speaks to his
5 intent which could show the Court what he's looking for and
6 why he's interested in these other pictures that we're
7 discussing. But ultimately, the picture itself has to depict
8 the prepubescent minor. And so I think the more appropriate
9 analysis would be to objectively view the picture and make a
10 determination based on what is depicted in the photograph
11 using the factors that the Court mentioned about development
12 of the minor.

13 THE COURT: Well, wasn't the trial testimony from
14 your expert witness that those -- or at least some, a good
15 many of those video files had been viewed at one time?

16 MR. CERVANTES: Yes. The problem is that the
17 enhancement applies to images and images does require a real
18 person. And without the actual images and videos in that
19 list, we cannot be for certain what it is that they actually
20 depicted.

21 THE COURT: So even though we have thousands of
22 photos with the moniker preteen hardcore and some of the file
23 descriptions talking about 3- and 4-year-olds, without seeing
24 them you think that that's insufficient for the Court to find
25 by a preponderance of the evidence that those contained visual

1 depictions of child pornography under the age of 12.

2 MR. CERVANTES: In an abundance of caution, Your
3 Honor, I'd say -- I'd recommend to the Court not to do that.
4 There's sufficient --

5 THE COURT: I think I am going to do that as an
6 alternative and as an additional basis for finding the
7 enhancement because -- I hear what you're saying: We don't
8 know; we don't see it. But if you've got thousands -- and
9 there was a lot of testimony about what pthc means. I think
10 the agent testified in their experience with respect to such
11 files that they almost uniformly show exactly what they
12 describe. The Court in a lot of cases -- it sees way too many
13 of these cases -- has seen pthc photos that in the file line
14 say 4-year-old such and such disgusting act or 3-year-old such
15 and such disgusting act, and by golly that's what they show.

16 So the Court finds, absent a meaningful argument to
17 the contrary, that the video of the two girls on the bed
18 described to be between 11 and 13 showed no evidence of the
19 onset of puberty and are thus prepubescent.

20 And also, with respect to the Court's recollection
21 of the exhibits that were put in of the modified images from
22 the teengallery.com also showed no evidence of the onset of
23 puberty and are thus prepubescent.

24 That the photo of the four girls who ranged,
25 apparently, in age from 9 or 10 up through later teens, that

1 those had also been modified in a way that showed bodies that
2 showed no indication of the onset of puberty and are thus
3 prepubescent.

4 And the Court is also persuaded by a preponderance
5 of the evidence that the thousands of file photos that were
6 testified about in court that contained very graphic
7 descriptions of child pornography of children as young as at
8 least 3, that the Court is persuaded by a preponderance of the
9 evidence that the viewing of those images did occur at one
10 time by Mr. Tatum and that they did include depictions of
11 child pornography of a child yet -- under 12 years old.

12 And so for those reasons combined, the Court
13 overrules the objection to paragraph 33.

14 Now, the next objection is to paragraph 34, the
15 enhancement for sadistic and masochistic depictions of sexual
16 abuse in infants or toddlers.

17 Mr. Ames.

18 MR. AMES: Your Honor, I think that -- well, I would
19 suppose that the objection in general is that that doesn't
20 apply to any child pornography, meaning an image or video with
21 a minor in it. I believe that the -- that enhancement, as far
22 as I can understand the government's position, is that it's
23 related to the anime.

24 THE COURT: That's right, isn't it, Mr. Cervantes?

25 MR. CERVANTES: Yes, Your Honor.

1 THE COURT: And of course, I'm sure you've read
2 their response to your objection to the presentence report
3 where they argue at length 2G2.2(b) (4), and a distinctive
4 nature of that is the offense involved material that then
5 portrays certain described things. So their argument is if
6 the offense involved material and then this is what's in the
7 material, then the enhancement applies. So that's their hook
8 to get to the anime.

9 MR. AMES: Yes, Your Honor, and that's my
10 understanding as well. I believe that the -- I guess the
11 theory would be 1466A, I think, 1466A would be the obscenity
12 statute that that would hypothetically be prosecuted under,
13 correct? So I think that's the way that the -- I suppose the
14 material where it becomes a consideration as part of this case
15 in spite of not being charged with it, I suppose that's where
16 it comes in.

17 THE COURT: And is relevant conduct under 1B1.3.

18 MR. AMES: Yeah. So if the Court is inclined to
19 agree that the phrasing of it as material means that it is
20 distinguished and distinct from the -- like the prior
21 objection where it does require a minor, it doesn't meet that
22 definition of child pornography which requires a person,
23 then -- if that's the Court's position as well, then I don't
24 really have much to argue as far as the -- that it wouldn't
25 apply to certain images. I'm just making it clear it's not

1 applicable to child pornography. But if it's applicable to
2 something related that is material, then that portion I can --

3 THE COURT: Well, I was unable to find any case that
4 had ever upheld the position that you are making. I'm not
5 necessarily as good a researcher as you are. Are you aware of
6 any such authority?

7 MR. AMES: Your Honor, I'm not aware, frankly, of
8 this enhancement being applied to anime in the history of
9 America that I can find, so I don't know. That's the thing.
10 This is, in a lot of ways, a novel situation. And the
11 prosecution for cartoons or digital images and now as we get
12 into the brave new world of these AI websites, I imagine in
13 the future there will be more -- it will be something that
14 there's -- some case law develops on.

15 Right now I scoured and looked. I mean, as a
16 lead -- as a lead charge, I think, ever, maybe this 1466A has
17 been prosecuted, like, five times or six. It's not very many,
18 as a lead charge without, like, having a child pornography
19 charge either ahead of it or attached to it. I think that's
20 really it. I couldn't find any -- I can certainly be wrong,
21 but I couldn't find any indication of any time when the
22 4-point enhancement for that was applied. It may exist; I
23 just couldn't find it.

24 So, you know, it's one of those things too because
25 1466A, as I think the government concedes as well, doesn't

1 apply to the image count, for example. So under the
2 guidelines as well, the number of images that are counted do
3 not include these animated images. They would only include
4 one with an actual depicted minor. So how and where we apply
5 these, it's a difficult question because I don't know how
6 often it's been done, to be frank.

7 THE COURT: I expect your prediction is right that
8 as AI and other such technology develops, that those who are
9 inclined to this sort of conduct will engage in it and the
10 courts will be faced with this question.

11 But, Mr. Cervantes, let me hear from you on the
12 government's theory as to the applicability of this.

13 MR. CERVANTES: Your Honor, the government reaffirms
14 its position in its brief which I won't belabor.

15 The government would like to move in evidence
16 Sentencing Exhibit Number 1 which is a compilation of a
17 sampling of the anime so that it's in the record and the Court
18 doesn't just have a reference to it in the PSR. My
19 understanding is that defense counsel is not objecting to
20 foundation and authenticity, just the application of the anime
21 to the guidelines as he described.

22 THE COURT: And is there any dispute that the images
23 shown in that anime, if this is an applicable enhancement,
24 would otherwise fit the description of sadistic and
25 masochistic depictions or sexual abuse of infants or toddlers?

1 Is there a dispute that that's what those images show?

2 MR. AMES: If the -- if the Court applies the
3 standard to an animation or cartoon in the same general
4 fashion it would to an actual video, no, I don't think there
5 would be a particular dispute particularly if we're talking
6 about definitionally, I suppose. I mean, as far as the case
7 law I have read, the -- it's crass, but sexual intercourse
8 with someone 3, 4, toddler age, in and of itself is a violent
9 image and meets that standard and that's what a lot of courts
10 have held.

11 THE COURT: Correct.

12 MR. AMES: So I think that there's -- on that just
13 at face value, yeah, I imagine the Court would find that if
14 that's the standard.

15 I would note the other -- the other hiccup and the
16 other problem with all of this is in some sense there is still
17 the 1466A standard where this is an obscenity matter that
18 requires some analysis anyway, I suppose, of whether or not
19 it's obscene or not because it's not pornography; it's
20 obscenity that we're talking about. So whether or not in the
21 grand scheme of the whole thing, has it got any
22 literary/artistic merit or value according to the community?

23 THE COURT: Well, you're going to have to convince
24 some other court of that.

25 MR. AMES: I understand, Your Honor.

1 THE COURT: All right. So the Government's Exhibit
2 1 is admitted into the record.

3 (Government's Exhibit Number 1 was received into
4 evidence.)

5 THE COURT: There doesn't seem to be any dispute
6 about what it portrays and the Court finds as a matter of law
7 that the -- those images as described and agreed to would
8 trigger the enhancement under 2G2.2(b) (4).

9 All right. The next objection was to paragraph 35,
10 5-level increase relating to engaging in a pattern of activity
11 involving abuse or exploitation of a minor.

12 Mr. Ames.

13 MR. AMES: Yes, Your Honor. So my understanding of
14 the government's position on that would be that, first of all,
15 the production count in this case would be part one of the
16 pattern. And then part two of the pattern would be one of the
17 prior bad acts that were discussed in trial.

18 I'm not going to belabor certainly the point that,
19 you know -- I understand what the precedent is. I don't think
20 you can have a pattern with two. That's neither here nor
21 there.

22 THE COURT: It struck me as odd when I first took up
23 this profession that a RICO requires a pattern of activity, by
24 which they mean two. I have trouble discerning a pattern from
25 just two dots, but so say the law.

1 MR. AMES: I agree, Your Honor. And so I think that
2 ostensibly there's two instances generally where the
3 government would go with this.

4 Number one is a -- there was some testimony about a
5 video that was allegedly taken some years ago, probably around
6 the year 2000, maybe before or maybe after, where there was a
7 surreptitious camera footage recording in a bathroom or shower
8 area in a family member's home in Atlanta that captured
9 allegedly the defendant's sister and another cousin.

10 THE COURT: Well, the Court finds credible that
11 testimony, including the testimony that the defendant admitted
12 to such conduct; and so the Court accepts as fact that that
13 occurred as described by the witness.

14 MR. AMES: Yes, Your Honor. I suppose what I
15 would -- what my position would be is that nonetheless, the
16 witness that testified has not -- does not know the content of
17 the video, has not seen the content of the video. There's no
18 evidence that there was nudity in it. There's no evidence
19 that there was -- if anything was -- how much or if anything
20 was visible, the angle of it. There's nothing. We literally
21 have no evidence of what's in it.

22 And I honestly think it's similar to kind of the
23 position and the point Mr. Cervantes is making about the file
24 paths. We can't see it. How can we determine if it's
25 pornography if we can't see it, we can't review it?

1 So as a general matter -- I mean, the testimony at
2 trial was, "I was told by somebody else who did not testify, I
3 was told that this video existed." There was no description
4 of what's in it. The age estimate was unclear how that was
5 arrived at.

6 THE COURT: No, the Court was persuaded with the
7 general accuracy of the date on that and it was well below 18
8 without any real doubt.

9 MR. AMES: Right, Your Honor. I guess my point is
10 that how does that person know when the video was made if
11 they've never seen it?

12 THE COURT: Well, as I understand it, it was from
13 the defendant telling her when it was made.

14 MR. AMES: My recollection, Your Honor -- and again,
15 I will defer to the Court certainly, but my recollection was
16 that it -- he acknowledged making a video or putting a camera
17 somewhere and showing the witness, you know, where it was and
18 how he did it. And it was through a -- there was a vent or a
19 fan or something in an attic or ceiling. And it was an old
20 video, like an old handheld type camcorder because this was
21 probably in the late '90s or something. But as to when it
22 occurred, what was on it, that kind of thing, I believe at the
23 trial there was no evidence. And it's not her fault. She
24 hasn't seen it. So --

25 THE COURT: Yeah, I get your point on that one.

1 What do you say about the two what have been called
2 up-skirt videos of this former patient?

3 MR. AMES: Your Honor, with respect to that, Your
4 Honor, so -- I mean, as a -- I suppose I would say, number
5 one, as a matter of law, it's not child pornography for a
6 couple of reasons. Number one, the person in the video was 18
7 years old. And number two, there was no actual, to my
8 understanding, exhibition or nudity. It was an up-skirt photo
9 that --

10 THE COURT: I'll disagree with you on that of what
11 it showed. I think the video did show a lascivious focus on
12 inappropriate parts of that patient.

13 And with respect -- there's no doubt that she was
14 not actually under age at the time they were made. She turned
15 18 five days before. But what about the government's argument
16 that the defendant believed she was under 18 as reflected in
17 his notes made of that session and that that would make it an
18 attempt and an attempt under the statute would qualify for
19 consideration of part of the pattern?

20 MR. AMES: Your Honor, on that point I would say,
21 number one, that the -- the reliance there is on a medical
22 record, as the Court is aware. That same medical record is
23 self-contradictory in a couple of ways.

24 Number one, it indicates on the initial page, the
25 first page, that -- it's a write-up of a summary of the

1 appointment where it's indicated that she is 17. But on the
2 final page of the report it says she's 18. And that's also
3 something that the defendant would have prepared if we're
4 looking at the total document.

5 Number two, Your Honor, the description in the
6 document of what the subject of that video is wearing is
7 jeans. And this is an up-skirt photo where the description of
8 the clothing that the person is wearing is "well groomed in a
9 T-shirt and jeans." So --

10 THE COURT: So we know that's not true.

11 MR. AMES: Know that's not true.

12 And my hunch and understanding of this all would be
13 that this is a person that met with Dr. Tatum on a regular
14 basis. That these reports probably got filled out every
15 single time and there was probably a lot of filling in some
16 blanks and leaving some other stuff in there and there's some
17 phrasing that just gets left into these reports. And I say
18 that because I have reviewed those reports and that's exactly
19 what's going on.

20 So there are a series of appointments stemming back
21 to March or April of 2015, all of which that same section
22 begins with essentially the same phrasing, and it is that the
23 "patient is a pleasant 17-year-old white female who I saw
24 individually today." And that's the same opening line of
25 every single appointment going back months and months.

1 THE COURT: Well, which does indicate on the day in
2 question that that's what he thought she was: 17-year-old
3 pleasant white female.

4 MR. AMES: Your Honor, that's possible. But I think
5 more likely is that there are certain sections that get
6 updated to fill in some new things. The rest of it is kind of
7 treated as boilerplate and it's continued on. Because, again,
8 I can -- I have all of these in front of me. The jeans
9 portion of it -- or what she was wearing was jeans. For four
10 months she's wearing the same thing. It says the same thing
11 as far as what she's wearing.

12 The other paragraphs -- the second reference to age
13 17 in a later section on that report on the day in question,
14 which was June 17, 2015, there's another -- the "patient is a
15 17-year-old girl with a chaotic childhood" and so on. That's
16 later on in the report. That phrasing is also in every single
17 one, including the one that comes a week later where the age
18 is correct and says 18 on the first page. It still says 17 on
19 the second page. Then it says 18 at the end.

20 So additionally, Your Honor, if the Court wants to
21 review -- I mean, I have highlighted all of the various ways
22 in which this report is just repeating certain language and
23 keeping it in there and only updating other things.

24 THE COURT: Well, what would have been helpful to
25 the Court with respect to the argument you're making is if you

1 had actually filed a presentencing brief and attached things
2 you wanted the Court to look at. It's a bit unfair to the
3 Court and to the parties, everybody who's spending time on
4 this, to say, Judge, please right now while we sit here look
5 at all these things I want you to see and consider. I take a
6 great deal of time getting ready for sentencing hearings and I
7 would have been glad to do that if you would have put this up
8 there. But I do not appreciate, Judge, I have all of these
9 reports. You should look at them and see how repetitive they
10 are. I'm not going to do that while I sit here. You're going
11 to have to be -- if you want to have real specifics on
12 something -- and I think you've said what you have to say, but
13 I'm not going to review copious records for consistencies and
14 inconsistencies, as you described, for the first time during a
15 sentencing hearing.

16 MR. AMES: Your Honor, I apologize, but I said this
17 at trial. I said it in the closing. I said it --

18 THE COURT: And so the Court should have sua sponte
19 said, please, Mr. Ames, prior to sentencing if you would
20 provide me with those records so that I can anticipate your
21 argument at sentencing and be prepared? That's what I should
22 have done?

23 MR. AMES: Your Honor, the document that was entered
24 into evidence in and of itself is self-contradictory. It says
25 she's 17 and it says she's 18.

1 THE COURT: Okay. I hear you.

2 MR. AMES: It's a preponderance of the evidence.

3 It's more likely than not. If there's two equally viable
4 positions, that doesn't meet the standard.

5 And again, we're not just talking -- we're talking
6 about a number on a paper to establish an intent to produce
7 child pornography, a typo, and when the same document says
8 she's 18 and the same document says she is wearing jeans.

9 THE COURT: I understand your argument.

10 Mr. Cervantes, let me ask you a couple of things.

11 For the pattern enhancement, the government, as I
12 understand it, is relying on four things: The count of
13 conviction, count two; the testimony regarding, I think it was
14 early 2000s video that was taken of the two girls in the
15 cabin; and then these two up-skirt videos of the patient; is
16 that correct? Those are the four that the government relies
17 upon?

18 MR. CERVANTES: Yes, Your Honor. Each one of those
19 videos of the patient would count on their own, by the way.

20 And the Court said that the testimony -- with
21 respect to the testimony about the video that he made
22 previously, the Court said cabin. It wasn't in the cabin.
23 The cabin was the place in Maine. The witness, Ms. E.S.,
24 testified that the defendant's sister had described this video
25 that the defendant's sister saw where the defendant's sister

1 and the witness were depicted naked in the shower. And the
2 witness confronted the defendant about that. He admitted to
3 it. And he showed her how he did it, where he did it. And
4 the witness testified as to the age of her and the defendant's
5 sister at the time. Her testimony was that they were both
6 under 18. I think she said 15 and 16.

7 THE COURT: What about Mr. Ames' argument that we
8 don't know what those videos showed by way of like a
9 lascivious display?

10 MR. CERVANTES: I think based on a preponderance of
11 the evidence, the Court has sufficient there to show what it
12 actually displayed. Also, the witness testified to what was
13 in the video as relayed to her by hearsay, which is admissible
14 in a sentencing hearing; and the Court need only determine
15 whether that testimony is credible.

16 THE COURT: Can you point me in the transcript
17 precisely to where that testimony was.

18 MR. CERVANTES: I'm sorry, I don't have a copy of
19 the transcript, Your Honor.

20 MR. AMES: Your Honor, I can probably pull that up.

21 THE COURT: I've got them.

22 MR. AMES: It's -- I know it's probably --

23 THE COURT: Remind me the...

24 MR. CERVANTES: Ms. E.S.

25 THE COURT: Ms. E.S.

1 MR. AMES: It's probably late morning on the second
2 day, Your Honor.

3 (Pause.)

4 THE COURT: Well, Mr. Cervantes, I've read that part
5 of Ms. E.S.'s testimony. And she does recount the defendant
6 admitting to taking the video and showing her how he took the
7 video, but there's nothing in here about what the video would
8 have shown. I mean, I can guess.

9 MR. CERVANTES: Your Honor, I would also add that
10 similar to the theory with the patient video, what he's trying
11 to --

12 THE COURT: The intent.

13 MR. CERVANTES: -- attempt is still on the table.
14 And the jury told us what his intent was specifically because
15 the Court responded to that question that they had.

16 Plus here is where all the other evidence comes into
17 play about what he intended to do and where the list of
18 thousands of videos also informs the Court about what the
19 intent was in recording and setting up that camera in the
20 bathroom.

21 THE COURT: And what about Mr. Ames' argument
22 regarding the inconsistencies of the patient records that
23 would inform us what Mr. Tatum thought was the age of his
24 patient?

25 MR. CERVANTES: I think it cuts against him because

1 it shows in fact the fact that he updated the record to show
2 that she was 18 shows that it's not just a copy and paste. In
3 fact, he is paying attention to the age and he's writing down
4 what he believes. And based on a preponderance of the
5 evidence, I think the evidence shows that he believed that she
6 was a minor. And we're talking about five days' difference.
7 So unless there's something else that would suggest that he
8 knew that it was her birthday, there's no -- there's no record
9 of them talking about her birthday celebration or anything
10 like that in the notes. And so there's nothing indicating
11 that he would have known that she turned 18 until later in the
12 records.

13 Mr. Ames pointed out a document from July 10, 2015,
14 in the patient's records where that same sentence says, "F.L.
15 is a pleasant 18 yo white female who I saw individually
16 today." So that shows the Court -- that's July 10, 2015. And
17 the video -- so her birthday is June 12, 1997, right? So this
18 is a month later he's seeing her again and a month later when
19 he is writing down his notes, he updates the age. That shows
20 the Court by a preponderance of the evidence that when he met
21 with her in June five days after her birthday, he believed she
22 was still a minor.

23 THE COURT: All right. And so the part of the
24 clinical notes from that day when the videos were made and the
25 part where it shows a date of birth, is that -- because I

1 think that's what Mr. Ames said, correct?

2 MR. CERVANTES: Yes, Your Honor.

3 THE COURT: And where does that appear? I guess I
4 should look at at least that one. I'm not going to look at
5 everything Mr. Ames wants me to look at.

6 MR. CERVANTES: That is Exhibit 11 that was
7 introduced and admitted at trial. I'm not aware of
8 anywhere --

9 THE COURT: Does anyone have a hard copy of that?

10 MR. AMES: I do, Your Honor. It's the second to
11 last page. I can approach --

12 THE COURT: Well, I want to see the whole thing, the
13 whole clinical notes from that day.

14 MR. CERVANTES: Your Honor, I have it digitally and
15 I could --

16 THE COURT: It might be easier for me to just thumb
17 through it --

18 MR. CERVANTES: Sure.

19 THE COURT: -- rather than each of you point out the
20 parts of it you want me to see.

21 MR. CERVANTES: Actually, Your Honor, I do have a
22 full copy of it here. May I approach?

23 THE COURT: Please. And identify again what trial
24 exhibit this was.

25 MR. CERVANTES: 11. And for the record, I'm showing

1 defense counsel.

2 THE CLERK: I just gave you a PDF of it as well.

3 THE COURT: I've got a PDF of it. I can pull it up.

4 MR. CERVANTES: Your Honor, I would also add to the
5 argument that the notes are done after the visit and so his
6 belief is when he's making the recording, not after when he
7 prepares the notes.

8 THE COURT: Is there -- is there an indication in
9 this exhibit as to when the report was prepared? Is there a
10 prepared date in here?

11 MR. AMES: It's prepared that day. I'm not sure
12 that --

13 THE COURT: It says reviewed 6/17.

14 MR. AMES: Your Honor, what I'm pointing to as far
15 as the 18 thing, I think, should be probably the second to
16 last page. It's the page that has some blue boxes and says
17 "MEDICINE" in big letters. That's where there's a description
18 of the patient that says "18-year-old female, provider David
19 Tatum" right beneath it where there's some prescription
20 medication information and so on.

21 MR. CERVANTES: Your Honor, that is -- that appears
22 to be an automated entry. That is not -- we're referring to
23 his actual notes.

24 THE COURT: That looks like an automated entry to me
25 that the system would pull up from its document retention

1 system.

2 MR. AMES: Your Honor, the -- I guess A, first, that
3 there's no -- we don't know that. And B, we don't know when
4 exactly these reports are prepared. And C, I think the
5 government, as they alluded to, the following appointment, box
6 1 is updated to say 18, box 2 below for the medical
7 decision-making history still says 17. So there's still a
8 typo below. And that persists. Other language just persists.

9 That's the point here is we're trying to derive an
10 intention -- we're trying to derive knowledge or intent from
11 this defendant based upon what -- even if the Court is not
12 convinced it absolutely is, very well could be a typo and
13 there's a very distinct possibility. And we're ascribing a
14 knowledge to him that he intentionally said I know this person
15 is 17, I know this person --

16 THE COURT: No, believed. Doesn't have to know.
17 Has to believe.

18 MR. AMES: Or believe, Your Honor.

19 And I think I stated this at trial as well. What's
20 all this going to tell us here? The videos that were created
21 were done on June 17, five days after this person's 18th
22 birthday. That would suggest that the defendant knew when her
23 18th birthday was and took the first opportunity to take a
24 video after she was in the age of majority. It would
25 certainly be a reasonable conclusion, rather than what would

1 be an apparent coincidence, that it just so happened after
2 that date.

3 There's no other videos of this particular person
4 that I'm aware of prior to the 17th of June in the months and
5 months that he's been treating her. It's only immediately
6 after the 18th birthday.

7 And the only reason, the only reason this can even
8 be alleged as an attempt is because a medical record that we
9 don't know how it was prepared has a typo or some information
10 that's not updated in addition to a bunch of other information
11 that clearly isn't updated. If we're talking about the face
12 of this document, we're saying -- we're deriving an intent to
13 do something, his belief that she was 17. Was his belief also
14 that she was wearing jeans?

15 THE COURT: Well, here's what I find to be the most
16 indicative part of this report that would inform us about
17 Mr. Tatum's belief at this time. It's on page 4 and it's
18 under the "Chief complaint/reason for encounter" section. And
19 it is very detailed about what was said, what was discussed
20 between them on that day. That section is all about that day.
21 And on that day he says, "F.L. is a pleasant 17-year-old white
22 female who I saw individually today," and then goes on to
23 describe in detail what they talked about that day.

24 So a lot of this is clearly, at least by a
25 preponderance of the evidence, I think pretty clearly

1 generated by the system itself, which would explain some of
2 the inconsistencies that you referred to.

3 MR. AMES: Your Honor --

4 THE COURT: But again, by a preponderance of the
5 evidence, the Court finds that the most reliable indication of
6 the defendant's belief at the time that he took these up-skirt
7 videos was that the victim was 17 years old. And so the Court
8 will overrule that objection.

9 Let me put one other finding on the record with
10 respect to the video of the two relatives in Atlanta.

11 The Court would find by a preponderance, but not by
12 any higher standard, but by a preponderance that the defendant
13 was attempting to make recordings of lascivious displays of
14 underage girls consistent with his obvious intent to do that
15 with respect to count two and his history in general with
16 trying to get and viewing such material, including this
17 up-skirt one. So that's the weakest of the four, but by a
18 preponderance of the evidence, the Court finds that that was
19 an attempt to produce child pornography and thus finds a
20 pattern sufficient for the enhancement.

21 Now, I think there was -- the next one was paragraph
22 37, the enhancement for the number of images. I believe --
23 although you objected to the draft presentence report, the
24 government, I guess, came to an agreement with you because
25 there's not a further objection with respect to that. That

1 was reduced to fewer than 600 images in the final report. So
2 there's nothing to resolve there, correct?

3 MR. AMES: That's correct, Your Honor.

4 THE COURT: Now, the last one, I think, is the
5 obstruction of justice enhancement. So let me hear from the
6 government first on that because obviously they have the
7 burden of -- well, they do with all these enhancements, but --

8 MR. CERVANTES: Your Honor, in support of this
9 enhancement we have three exhibits that we would move in
10 evidence marked as Sentencing Exhibits 2, 3, and 4.

11 Exhibit 2 is the actual recording that's discussed.
12 This is referenced in paragraph 15 of the PSR.

13 Exhibit 3 is the email from the ex-wife attaching
14 the recording and sending it to the FBI agent.

15 And Exhibit 4 is the list of -- basically the full
16 list of files referenced in that same folder path that has
17 files with the name pthc. So as described in the government's
18 response, the trial exhibit was really a reduced version of
19 the files -- all of the files that are in the same folder
20 path. The totality of all of the files in that folder path is
21 10,308 rows. We filtered that so that only the file names
22 with pthc were the government exhibit, and that reduced the
23 list to 1,000 -- just over 1,000. That's what was introduced
24 at trial. To make it clear what we're talking about, just
25 focus on the pthc part.

1 For sentencing, we would move the entire list into
2 evidence. There's 10,308 rows which have other descriptions.
3 The Court has experience seeing these kind of file names and
4 they're all consistent with child pornography. And we would
5 move these three exhibits in evidence in support of the
6 government's response to this objection. And I don't believe
7 that the defense has an objection to the authenticity and
8 foundation. It's just an application. And if that's correct,
9 I would move these exhibits into evidence and seek permission
10 to publish the exhibits.

11 THE COURT: Yes, they're admitted. And publish what
12 you think the Court should see and your accompanying argument.

13 (Government's Exhibits Nos. 2, 3, and 4 were
14 received into evidence.)

15 MR. CERVANTES: Publishing Sentencing Exhibit 2
16 which is the recording. And I'm playing from the beginning to
17 minute 2:33.

18 THE COURT: I think you're the only one seeing it.

19 THE CLERK: Yeah, I think you need to hit HCM 2.

20 MR. CERVANTES: One moment, Your Honor. The audio
21 doesn't seem to be cooperating with me.

22 (Government's Exhibit Number 2 was published.)

23 MR. CERVANTES: I'm fast forwarding to 3:40 to 3:57.

24 (Government's Exhibit Number 2 resumed.)

25 MR. CERVANTES: And the reason why I fast forwarded,

1 Your Honor, is because a portion of that audio is redacted so
2 just to move over the white noise that's inserted into the
3 audio.

4 The government publishes Sentencing Exhibit 3. I'll
5 leave this on the screen until the Court tells me.

6 (Court peruses Government's Exhibit Number 3.)

7 THE COURT: So the phrase is he needed to get rid of
8 something, and then he said "getting rid of evidence" and
9 "trying to stay out of jail." Are those phrases -- can they
10 be heard on the call because I didn't -- I don't think I heard
11 them just now.

12 MR. CERVANTES: No, I think those are just her
13 paraphrasing her memory of the call.

14 THE COURT: All right.

15 MR. CERVANTES: And then --

16 THE COURT: It's just that they were in quotes so I
17 wanted to make sure that's her -- not a quote, but her
18 reporting of her recollection of the call.

19 MR. CERVANTES: Yes, Your Honor.

20 And Sentencing Exhibit 4, this is the full list that
21 I had mentioned. It's 240 pages. I'll scroll down to the
22 bottom. There's 10,308 rows.

23 And I'm going to go to page 9. And here the Court
24 can see starting -- starting around 357, and these are going
25 to be chronological now, I guess, just because of the way the

1 file convention is, but they start describing the ages of the
2 victims. And so we start with 3-year-old.

3 Once we get to row 370, there's 4YO.

4 Row 386 talks about 5YO.

5 When we go to page 10, we continue with 5YO.

6 Then we move on to 6YO.

7 And the descriptions are consistent with the Court's
8 memory of these kind of descriptions and I won't read them
9 into the record.

10 Moving on to page 11, the ages go to 7YO, 8YO.

11 Going on to 12, 9YO, 10YO, and so forth and so on.

12 And so the obstruction of justice enhancement is
13 based on the government's description. I won't belabor it
14 more than what was already written in the response. But the
15 fact that he went -- the timeline is also important which is
16 described in the PSR. The timeline is that he met with the
17 government. Got a copy of discovery. Understood what was
18 happening. And then he goes into the attic. Gets rid of this
19 hard drive. He makes his initial appearance the following
20 month. He was very well aware that charges were coming. And
21 the audio shows what it is that he was trying to do.

22 And Ms. Tatum's description of it also, I think, is
23 important. That was her interpretation of the conversation
24 and why he was going into the attic. It was to get rid of
25 something.

1 And forensically, we have the evidence that shows
2 that there is a missing hard drive. And I think from a
3 preponderance of the evidence, I think the Court can easily
4 conclude that that missing hard drive with the list of
5 10,000-plus file names that are consistent with child
6 pornography is the hard drive that he went and got from the
7 attic and he destroyed. And under the obstruction of justice
8 enhancement in Section 3C1.1, that conduct squarely fits this
9 kind of conduct.

10 THE COURT: Put on the record again the forensic tie
11 between what's referred to as the missing hard drive and these
12 file paths for child pornography.

13 MR. CERVANTES: Sure. So the forensic analyst,
14 Jason Whitt, testified that this list of pthc came from the
15 MacBook. And it's a list that's generated when the user plugs
16 a hard drive into the computer and the computer, to help the
17 user, will remember all the file names and it records that.
18 So the next time you plug the hard drive in, it moves faster.
19 It operates faster. It's trying to help the user out.

20 And so this list is generated and saved inside of
21 the MacBook. That's how we're able to generate this list. We
22 don't have the actual hard drive that had this list of files,
23 we believe, because it's the hard drive that he took from the
24 attic and destroyed.

25 THE COURT: All right. Thank you.

1 Mr. Ames.

2 MR. AMES: Your Honor, I guess a couple of things.

3 Number one, this -- this would not technically be a
4 list of images; rather, it's probably a list of QuickLook
5 thumbnails that the MacBook generates automatically, not upon
6 access in the sense of opening it, reviewing it. It's merely
7 a procedural thing that happens. I just plugged my little
8 drive into my laptop. If you do that on a Mac with anything,
9 and Mr. Whitt testified about that too, thumb drives, all
10 kinds of stuff. Anything that can generate a thumbnail,
11 anything at all that can generate any sort of quick view type
12 of thumbnail can generate this automatically on the device.
13 You can't actually see the images because they're in a cache
14 folder, as he called it in Windows, QuickLook on Macs.

15 THE COURT: So you -- I mean, I get what you're
16 saying. You can't see -- if all you had was the MacBook, you
17 can't see where these file paths would have taken you.

18 Isn't the importance of this that at some point some
19 hard drive had those paths on it and that is proven by the
20 fact that it's -- those are on the MacBook in that format?

21 MR. AMES: Your Honor, I would say -- I would say
22 first that a significant number of the images and things that
23 were presented at trial were thumbnail-based and did exist on
24 the Mac in that thumbnail form.

25 So for instance, there were -- the video from

1 Rochester with the patient, there was a thumbnail of that
2 video on the Mac. The video wasn't there, images on it, but
3 the thumbnail in that folder existed so you could actually see
4 it. These file paths do -- there is no even thumbnail
5 whatsoever. They are just a string of texts that exist.

6 They want to make the inference on -- it's layered
7 inferences. Number one, that these images were at some point
8 in time on this device or a device that had some images with
9 these names was plugged in. We don't know when or by whom or
10 what the circumstances were.

11 THE COURT: Well, I think that it's even more basic
12 than that. What this shows is that at some time another hard
13 drive of evidentiary value, whatever it actually showed, but
14 of evidentiary value was connected to the MacBook and never
15 found.

16 MR. AMES: Maybe. We don't know.

17 THE COURT: Something else had to be connected to
18 it, was the testimony of the forensic expert.

19 MR. AMES: Yes, but we don't know what, we don't
20 know when, and we don't know anything period.

21 THE COURT: Right. Tell me if you disagree with
22 this. The forensic testimony was that at some time some other
23 device had to be connected to the MacBook to generate those
24 file paths and that that device, whatever it was, was never
25 located.

1 MR. AMES: I'd say that was the testimony, yes, Your
2 Honor.

3 THE COURT: So then the question becomes -- and all
4 it has to be is whether it's of evidentiary value. It doesn't
5 have to be the smoking gun. It doesn't have to be 30,000
6 movies of child pornography. Just of evidentiary value.

7 Now the question becomes -- since we, I think, are
8 fully persuaded that there is a missing hard drive that was of
9 evidentiary value, now the question becomes whether
10 Mr. Tatum's conduct with respect to visiting the attic and the
11 phone call with his wife, whether that is sufficient for the
12 Court to find by a preponderance of the evidence that that's
13 the missing hard drive and that his intent was to put that
14 evidence beyond the reach of the investigators.

15 MR. AMES: Well, Your Honor, I would say we don't
16 know that -- we don't know that this is the drive. We don't.

17 THE COURT: I don't have to know. I just have to be
18 persuaded by a preponderance of the evidence.

19 MR. AMES: I understand, Your Honor.

20 This was a conversation -- a portion of a
21 conversation that we can try and infer the context certainly
22 of what was going on in and around this time frame, but we
23 don't know specifically what's being referenced. This could
24 be some other unrelated matter, Your Honor. Just -- I'm not
25 putting anything on him, but if there was evidence of some

1 other crime or evidence of a crime that someone else committed
2 or some other piece of damning information that was on there
3 that may exist. We don't know if it's specifically related to
4 this case or something else or if there's -- we just don't
5 have any information with respect to that. We don't know even
6 what these images are.

7 Again, I understand what the Court is saying.
8 They're suggestive file paths. We don't dispute that. But we
9 don't know anything other than speculation about how they got
10 where they got or what they were. We don't know if they're
11 anime. We don't know if they're pornography. We don't know
12 how many years ago they were -- or if ever --

13 THE COURT: Doesn't have to be any of that. Again,
14 you're jumping over how the Court tried to frame the
15 discussion. If this missing hard drive was of evidentiary
16 value, to argue that it may not have had good evidence on it
17 doesn't answer the question.

18 MR. AMES: Well, I'm saying if we don't know what's
19 on it, how do we assess the evidentiary value?

20 THE COURT: Well, one of the ways we can assess the
21 evidentiary value is to see what conduct Mr. Tatum took with
22 respect to it. He went into his attic at night and hurriedly
23 gathered something up and rushed past his wife. So he thought
24 it was important whatever this was. And his too clever by
25 half explanation to his wife that he didn't want to talk about

1 it so she would have plausible deniability or even actual
2 deniability. You can't testify to what you don't know. So
3 obviously it had some evidentiary value about something.

4 And she asked specifically, "Up in the attic was it
5 a hard drive?" And he said again, "Plausible deniability."
6 Which the reasonable inference from that is, yes, but
7 plausible deniability. Because otherwise it would have been:
8 "No, it wasn't a hard drive, but I'm not going to tell you
9 what it is."

10 And then sort of the icing on the cake is his
11 statement that -- and this is in reference to going to the
12 attic, getting something, leaving, and not admitting to his
13 wife what it is. "It's a lot better that this happened."
14 Meaning there's a lot less evidence now that I've done this.

15 That's the Court's finding by the preponderance of
16 the evidence; that it is most -- more likely than not -- I'd
17 say most likely that what he retrieved that night was the
18 missing hard drive that would have been of evidentiary
19 value -- I expect extreme evidentiary value, but certainly of
20 evidentiary value -- and that he acted intentionally in
21 retrieving that and putting it beyond the reach of the
22 investigators. And so the objection to that enhancement is
23 overruled.

24 Now, I think that's all of the objections to the
25 presentence report, which means that the Court accepts the

1 presentence report without change and finds that before
2 consideration of departure or variance, the guidelines provide
3 for an offense level of 43, criminal history category I, which
4 under the guidelines calls for a life sentence, but because of
5 the statutory maximums, the guideline range is 2 -- 720
6 months, which is 60 years.

7 Now, we went through all that exercise because, of
8 course, the Court's first mission is to correctly calculate
9 the guidelines, which I think I have. Now the question turns
10 to what is an appropriate sentence under the 3553(a) factors.
11 Those are not the same questions.

12 So let me hear from you, Mr. Ames, with respect to
13 an appropriate sentence.

14 MR. AMES: Thank you, Your Honor.

15 As the Court noted, he is a record level I. Has no
16 record at all other than one speeding ticket perhaps.

17 He is a very bright, very intelligent person who, as
18 he has -- or we have, I think, discussed previously and I
19 maybe got in trouble for it a little bit, but was going -- has
20 sought out help and therapy for this.

21 Ostensibly where the -- the onus or the crux where
22 this ultimately comes from in his background and history, Your
23 Honor, as far as I can tell in knowing him, is he was bullied
24 quite significantly as a child back in his days of middle
25 school. That sort of was a major factor in sort of the

1 turning to pornography and that kind of thing as an outlet for
2 whatever he was feeling at the time. I'm no medical expert.
3 Obviously I'm no doctor about that, but that's -- in the
4 treatment that he's done and others that have worked with him
5 think that that -- and his family and his parents as well,
6 think that that is a big part of it.

7 In addition, Your Honor, he was diagnosed at a young
8 age with ADHD and so was -- once prescribed medication for the
9 ADHD, started excelling. Did very well in school. Kind of
10 came around. Became much more happy, I think, in the high
11 school and college years. But perhaps that can also, you
12 know, spur on -- the ADHD as a diagnosis can spur on some of
13 the behavior. I'm not suggesting, certainly, that that
14 absolves him of blame. All I'm suggesting is trying to create
15 and figure out what is -- what's the reason, right?
16 Because -- what's the reason to have these Japanese cartoons
17 on your computer? What's the reason to put a camera in a
18 shower area of a family member? Is it just happenstance? I
19 don't know. But there may be some compulsory things that he's
20 gone through, and I think that's a legitimate portion of all
21 of this because I think anybody that is in this situation has
22 some sort of demons to reckon with.

23 I apologize, my computer is not turning on.

24 One thing I will discuss as well and I do know, we
25 submitted to the Court some letters on his behalf from some

1 friends, family members, colleagues, and so on there, Your
2 Honor.

3 And so again, with respect to his characteristics, I
4 think, Your Honor, as noted in the presentence report, the
5 probation officer did a very good job of outlining his
6 background, his work history. He excelled in school. He has
7 been a successful practitioner as a psychologist in various
8 regions and most recently here in Charlotte. By all accounts
9 a very good record as a doctor. Again, the -- my hunch
10 probably is that there was an expectation perhaps that, well,
11 when we investigate this and there's this sort of AI morphed
12 pornography stuff and this person is a doctor to patients that
13 are young, well, this is going to be a huge, really messy
14 situation if we find out that there's something untoward going
15 on with patients.

16 In the investigation there was the handful of
17 instances that the government produced with respect to
18 Rochester which was the up-skirt video that we've been
19 speaking about from 2015, in that time frame. In Charlotte
20 there's no evidence of any impropriety with any patient, no
21 evidence of anything untoward with anyone. Reviews have
22 been -- reports have been nonexistent. There's been -- the --
23 his place of employment is aware of, obviously, what he's
24 charged with. He self-reported to the medical board when this
25 got underway. Cooperated with them. Provided them

1 information. When he was ultimately indicted on the
2 superseding indictment, at that point in time that nixed any
3 real hope of him having his medical license. But nonetheless,
4 he was cooperative with them. They recommended he go and seek
5 counseling and treatment. He did that. And so he takes very
6 seriously and I think by all accounts was a good doctor to
7 many people notwithstanding what happened to the victim in
8 this case.

9 Your Honor, with additional respect to -- reflecting
10 the seriousness of the offense, certainly, Your Honor, the
11 Court is well aware 2251 is a serious -- is as serious as it
12 gets in general short of a literal physical violence type of
13 criminal activity. It's a statute that obviously requires a
14 mandatory minimum of 15 years and requires that presumably
15 because it's kind of multifaceted in general. It's one that
16 involves victimhood in the sense of the abuse that happens to
17 the minor at the time and the re-victimization that occurs
18 when that imagery is out in the world forever and ever. And
19 particularly it's a statute that's designed to go after people
20 that in tandem take the action of abusing a minor, which is
21 horrific in and of itself, but doing so for the purpose of
22 then later on profiting or humiliating and sharing with other
23 people the image that they created. That's why this is such a
24 serious charge. That's why this is such a serious statute and
25 a serious sentence.

1 That said, Your Honor, when we're considering the
2 guidelines -- reflecting the seriousness of the offense, we do
3 have to consider the offense in question and not the more
4 generalized, broad, what these usually are. In this
5 particular case if we're considering what this is, it's not --
6 what I mean to say, Your Honor, it's not a blanket situation.
7 There's a spectrum of offenders and the Court should take into
8 account this behavior and compare it to other defendants and
9 compare what type of sentences they received based upon the
10 conduct that occurred.

11 In Mr. Tatum's case, he never physically abused
12 anyone. He never physically assaulted, coerced, or did
13 anything of that nature.

14 Never -- never produced a video with the intent to
15 share it or give it to anybody else. There's been no evidence
16 of that. I don't think that exists.

17 And again, there's only -- well, there's only one
18 actual video in evidence that would constitute a production
19 count which is the video in Maine. I understand the position
20 the government would take is that there are -- there were
21 attempts or unproven allegations with respect to Atlanta with
22 the cousin and the hospital one with the patient who was 18.
23 But nonetheless, this was not a situation of a prolific
24 producer of pornography. That doesn't exist. It was one
25 video from a number of years ago in -- couched within a bunch

1 of other voyeurism videos.

2 And that, Your Honor, is kind of the crux of a lot
3 of Mr. Tatum's problem is that he does have an apparent
4 predilection for voyeurism, meaning the liking -- basically,
5 being able to surreptitiously watch and observe somebody. And
6 that, in large part, is the bulk of -- you know, there are
7 numerous videos, numerous images of this happening to numerous
8 people. The vast majority of which are either adults or --
9 I'm not sure who they are. But they certainly are not a
10 treasure trove of a whole bunch of instances of Mr. Tatum
11 going around and targeting minors for production purposes.
12 There is one video and there are a couple of pieces of
13 evidence that are not very specific about him engaging in what
14 is ultimately voyeuristic activity, which is placing a camera
15 where somebody doesn't know where it is, putting it in a
16 locker room, putting it in a shower, that sort of thing, where
17 a person can see another person in the nude.

18 And, Your Honor, I think there is a big distinction
19 between that, as horrible as it is -- and we have never shied
20 away from the fact that that's horrible, but there's a federal
21 statute for voyeurism. There's a federal statute that does
22 target that specific behavior. There's certainly state
23 statutes as well that target that behavior. The -- I mean,
24 the voyeurism statute from the federal law is from right
25 around the same time, honestly, as the *Ashcroft* case and

1 everything back in -- and PROTECT Act back in 2003. I think
2 there was -- a lot of it came into play back then. And it,
3 you know, specifically goes into instances of when a person
4 has a reasonable expectation of privacy and they are filmed in
5 a private area and their breasts are filmed, and it goes into
6 a lot of the behavior that has been described as far as
7 Mr. Tatum is concerned.

8 The Congressional Record and the commentary and
9 everything likewise specifically indicates within it that this
10 is to -- the purpose of that voyeurism law is to curb the
11 filming of locker rooms, the filming of gyms and showers and
12 areas. And it specifically references places where minors
13 would be, schools, and so on. It's in there, meaning the
14 statute was contemplated to prevent the activity where a
15 person does something voyeuristic where it falls short of this
16 level of being the production of child pornography. There are
17 some cases that deal with that where, like, some coaches were
18 filming people naked but not doing so in a way that is
19 pornographic; it's a picture of somebody naked. And that's
20 why that statute exists because not every case is this and not
21 every case certainly can prove that there was a lascivious
22 exhibition or what the person's intent is.

23 So as far as Mr. Tatum is concerned, a lot of what
24 his conduct is is voyeuristic in nature and generally targeted
25 toward that, and that's what the evidence would show as far as

1 any production because there really aren't any beyond that and
2 this series and handful of some morphed images that were, I
3 think, roughly -- Mr. Cervantes can correct me if I'm wrong.
4 There was maybe a dozen or so total that were saved, I think.
5 I could be wrong.

6 And like I said, Your Honor, never shared, never
7 distributed, never posted, never for anyone's eyes but his.
8 And it doesn't make it right. But also it doesn't make him a
9 person that targeted children for the purpose of profiting or
10 sharing or giving away private images of them after sexually
11 assaulting them. If we're looking at the statute for the
12 production charge (A) through (E), it's raping a child,
13 committing acts of sodomy and incest with a child, it is
14 bestiality. It is as horrific as horrific gets.

15 And the final one is a lewd and lascivious
16 exhibition, which is probably the only one that doesn't
17 require actually committing rape. That section also has a
18 series of -- or that definition of child pornography when
19 it's -- what is lewd and lascivious? You know, we believe
20 certainly in every case like this, but in the trial as well
21 with the *Dost* factors, what is that and what constitutes lewd
22 and lascivious? And that can be any number of things.

23 And here it was more or less that these images were
24 pretty benign in the grand scheme of things. And a lot of the
25 argument came down to what was his intent? And that's what

1 the argument has been today. What was his intent in doing
2 this? He attempted to do it -- his intent was to film a
3 person that was naked. Again, I say that not to condone it,
4 but to say that in the grand scheme of things, in the world of
5 people that get charged and convicted under this statute, I
6 imagine there are very few who in their entire lives have been
7 found to have one single video that constitutes production of
8 child pornography after a thorough investigation. And it's
9 not just the items they seized initially. There was Google
10 searches, there were Cloud drives, and so on and so forth.

11 If this was a person that was doing this around his
12 patients, if this was a person that was committing sexual
13 assaults on anybody, I imagine we would have heard about it.
14 We haven't. There's been no evidence of any untoward. This
15 is a person who engages in voyeurism.

16 The morphing thing is part and parcel of that as
17 well. It's a program that a person can use to make somebody
18 naked and they don't know it. And he never shared it with
19 anybody.

20 There does need to be adequate deterrence for the
21 conduct. The production statute is quite adequate, I think,
22 at deterring conduct in a variety of ways because it does
23 require a mandatory 15 years. It does require significant
24 post-supervised release once the person -- if they ever get
25 out. I understand, Your Honor, that -- I mean, well, the kind

1 of sentences that are available in this particular case, it's
2 a mandatory minimum. There's not much wiggle room, certainly,
3 in the type of sentence available in terms of it being served
4 as a prison sentence.

5 I know that Mr. Tatum will request, and his family
6 would really appreciate if he had the ability to go to a
7 facility where he can receive treatment himself as trying to
8 rehabilitate, help himself, but also, when appropriate,
9 counsel others. Because regardless of everything, he's a good
10 doctor. He's somebody that has helped people. And to make
11 use of his time in a positive way, I think he does have the
12 ability to perhaps help fellow people who are going and
13 struggling through this. So I know that he would appreciate
14 any recommendation the Court may be able to give with regard
15 to any sort of treatment or facility that may have some sort
16 of programs that might be suited to him.

17 Again, the guidelines range here is what it is.
18 It's life, Your Honor. I would just submit that that's not
19 appropriate for this defendant. Your Honor, life in prison
20 for somebody, again, who has not ever touched or harmed
21 somebody with physical violence.

22 Again, I'm not suggesting that there aren't victims
23 here. We've certainly known that, acknowledged it. The
24 families, I'm sure they will tell you just about how broken up
25 everything is and how much this has damaged and impacted them.

1 So it's not like I'm saying that there's nobody that's been
2 harmed here. And I'm not saying that nobody has a lack of
3 long-term harm. I know that there's trauma that comes with
4 the knowledge that you have been filmed in the nude or an
5 image of your body has been created and it's out there.
6 That's part of why this statute is so serious. That's why.
7 Because it re-victimizes over and over again if it's out
8 there.

9 The thing -- it may not give much solace, but I hope
10 it gives a little bit, is that -- and this isn't just me as a
11 defense attorney saying this. It's what the evidence bore
12 out. There was no sharing of images. There was no posting,
13 there was no giving to anybody. The government had password
14 protected drives they had to get into. These were not
15 distributed on the internet. Just as far as any victim in the
16 case is concerned about that, that aspect, there was no
17 evidence of sharing it and it -- and certainly the federal
18 government has protocols in place that in this trial setting
19 it does not get distributed in this setting either. So I just
20 want to make sure that people are aware that that has not
21 occurred in this case.

22 I'd also note just the volume as well, Your Honor,
23 to take into consideration here as well. Again, if we're
24 considering the wide breadth of these type of cases -- I know
25 Your Honor has done plenty of these at this point. Part of

1 the consideration, certainly, is the nature of what the stuff
2 is. And part of the consideration is how much of the stuff
3 there is. Again, for the production count, there is one
4 video. There are four videos that have been -- in total of a
5 pornographic nature that have been given as evidence. There
6 are some other images of the morphed variety that were also
7 given as evidence. That's the extent of the child pornography
8 images that exist in this case. That's why the guidelines
9 recommendation is the 300 to 600 images because it's four
10 videos which get you to 300 and then a little bit above that,
11 but not as much as 600.

12 There are certainly cases that have far more than
13 that and are far more egregious. If I'm thinking about, like,
14 relative sentences and things to compare things to, well,
15 first, for just the possession aspect of it, the things that
16 were possessed, off the top of my head I know, you know, I had
17 the case with Mr. Bonds a year or so -- a year or two ago. If
18 you recall, Your Honor, that was the case where the defendant
19 probably inadvertently uploaded a bunch of files he didn't
20 want to to a Google drive when he was backing up a computer.
21 NCMEC caught it in their filter and ultimately found that
22 there were 150 videos that constituted child pornography that
23 were on his device. Those videos were an absolute horror
24 show. I don't do a lot of these cases, but I do enough to
25 know that that was the worst I've seen. And I think -- Your

1 Honor I don't think had the -- I won't say privilege, but you
2 didn't get to see those images. That was a plea situation.
3 But the descriptions of them, if I recall, Your Honor said,
4 "That's about the worst I've ever seen." And I wouldn't
5 disagree. Mr. Odulio was there, I think, too.

6 And the sentence there, there was a similar
7 situation in some context to Mr. Tatum in the sense that that
8 defendant, Mr. Bonds, had no criminal record. It was zero
9 points. Also, there was no evidence of him sharing,
10 transporting these images other than, you know, going from a
11 laptop of his to a Google drive of his. That was the only,
12 sort of, transport of any kind. No distribution. No criminal
13 record. But a whole lot of -- 40 times as many videos that
14 were attributed to Mr. Tatum. And again, with respect --
15 those were the worst of the worst.

16 The videos here, again, we made argument certainly
17 that some of the images that are here aren't -- don't even
18 qualify under the statute as child pornography. May qualify,
19 as the government argues, as an attempt at it, but not
20 actually fully completing that offense.

21 So the number of images is significantly lower than
22 a person that is often in these proceedings in the federal
23 system. I believe Mr. Bonds' sentence was ultimately -- for
24 the possession count was 84 months, again, for 40 times as
25 many images and ones that were significantly worse than what

1 were on Mr. Tatum's devices.

2 I know the government will say there's -- well, he
3 had these lists and he had these file paths and he had anime.
4 And that's correct, Your Honor. There's copious amounts of
5 animated images. And again, it's not me condoning or saying
6 it's good. It's me saying in the grand scheme of things, if
7 we're looking at the spectrum or looking at a scale here of
8 what's the appropriate punishment for an offender, the person
9 who has actual images of actual minors, toddlers, and so on,
10 actually being violently harmed is the person that deserves
11 life in prison. The person that has animated pictures, the
12 person that has images of people that are 11 or 12 or maybe 13
13 where it's unclear or we're having to have a discussion about
14 whether or not they're pubescent or not to determine whether
15 it qualifies under certain aspects for an enhancement, those
16 are the type of cases where the highest of the high punishment
17 is not what I believe the Court should do because if -- it's
18 hard to imagine a case that doesn't -- it's hard to imagine a
19 situation where -- particularly as we discussed in the brave
20 new world of AI, it's coming and these prosecutions are
21 coming.

22 And I do know and I certainly do -- concede the
23 argument that there needs to be a showing that this isn't
24 appropriate behavior and that it will be punished, but the
25 punishment should not be for the purposes of sending a

1 message. It should not be for the purposes of putting a head
2 on a stake and saying here's what happens when you do this.
3 It should be appropriate to the conduct that occurred and the
4 images that he had.

5 The vast majority of the evidence that is put forth
6 by the government that is so damning is largely evidence of
7 things that there is -- they don't have and are speculating
8 about the contents of. Just in particular, Your Honor, the
9 reason why I go -- I spent so much time belaboring this file
10 list and while at trial with Mr. Whitt I made him sit there
11 all day answering all my questions was specifically for this
12 reason. We don't know what it is. And in particular, this is
13 a person that the government has just said has maybe the
14 biggest anime collection they've ever seen, that has, as Your
15 Honor heard earlier, sadomasochistic, whatever, images,
16 cartoons on the device. But they also want to simultaneously
17 say, hey, I know you didn't find any of that -- you didn't
18 find any sadomasochistic infant stuff anywhere on all the 21s
19 you found, but these file paths are definitely child
20 pornography. They're not anime. They're not nothing.
21 They're definitely child pornography.

22 Again, we don't know. We don't know if they're real
23 children. We don't know if they're animated. We don't know
24 if they're cartoons. We don't know if they're not any of
25 those things. We don't know. The file path, in fact,

1 frankly, Your Honor, that precedes all those names is a file
2 path that's the same as a bunch of anime as well. It's
3 Lolicon something or other and day in the life. It's an anime
4 folder path that is housing a lot of these. And again, we
5 don't know what they are. But there's just a blank
6 implication like that -- they're definitely preteen hardcore
7 actual children.

8 THE COURT: You may not know the answer to this, but
9 the file names for the anime, do any of them go on to the
10 point like some of the other file names and end with
11 "3-year-old with dad"? I mean, is that how any of the anime
12 films are described?

13 MR. AMES: I'll be honest, Your Honor, I'm not a
14 connoisseur.

15 THE COURT: No, I just thought you had looked at
16 this a lot more than I have. What I'm trying -- the point of
17 the question is, is there a discernible -- is there a way to
18 be confident to any extent that when you're looking at a file
19 name, that's probably anime; and if you're looking at another
20 file name, that's probably real kids?

21 MR. AMES: I don't -- and -- I don't know. I mean,
22 there's -- there's -- the file lists have -- again, it's a lot
23 of images. And again, we're also -- I haven't even discussed
24 the fact there's also just regular adult pornography too.
25 Again, we're talking about somebody that had a problem with it

1 and has coped with it and had a large collection.

2 But in a collection that vast and that large, where
3 we're talking about tens and tens and tens of thousands of
4 images, they found four total videos that could even reach the
5 definition of child pornography. They found a handful, a
6 dozen or so of morphed images. And they found other file
7 paths. They found a whole lot of anime. They found a whole
8 lot of adult porn, probably some that isn't all that, you
9 know, straightforward, I guess. They found voyeurism videos
10 and all the rest. But they didn't find a treasure trove of
11 actual child pornography, but they found a lot of perverse
12 things. And they want to -- and they are pushing for a life
13 sentence largely on the basis of evidence that we don't have.

14 And I understand that the system has guidelines and
15 practices. And I understand that the standard at sentencing
16 hearings is preponderance. But I just ask the Court to keep
17 in mind that the enhancements involved that take this from
18 what would be an otherwise 20ish-some-odd-year sentence and
19 push it to the maximum that's allowed under the law is based
20 upon, in many ways, presumptions, assumptions. We think
21 probably this happened. We're inferring this. This is most
22 likely what it is. And we're relying upon in many cases
23 testimony and recollections from things that happened a very
24 long time ago and in some cases things that people had no
25 actual firsthand knowledge of. Ages of when something was

1 taken. What was the contents of a video that that person has
2 never seen? These are some of the bases for -- a piece of
3 paper that says 17 instead of 18 is potentially the difference
4 between a sentence -- it's ten extra years.

5 So in the grand scope of it, I ask Your Honor to
6 consider this is not a case where, hey, there's a giant bucket
7 of everything. We got him dead to rights. This is a case
8 that has certainly a lot of nuance, but certainly a lot of
9 speculation as well. And we can infer, but at the end of the
10 day, Your Honor, I think there needs to be some -- at least
11 some deference given to the relative lack of evidence that
12 we're having to just assume, well, it must have existed at
13 some point and so therefore we will go forward on that
14 assumption.

15 I would say, Your Honor, I mean, I think even in the
16 western district, last time I looked, a production count, the
17 average sentence that a person receives on production is
18 probably somewhere in the ballpark of 2, 250 months, or
19 something along those lines. For possession charges it's
20 somewhere in the ballpark of probably 70 to 80. And here the
21 recommendation is 720, I believe. And...

22 THE COURT: It's okay to stop. You've said a lot.

23 MR. AMES: I know, Your Honor.

24 THE COURT: I know you're afraid to sit down and
25 then think, oh, dang, I meant to say that.

1 MR. AMES: My entire life is always that, Your
2 Honor.

3 THE COURT: I remember. I used to stand right
4 there.

5 Look, I think I understand all of your arguments and
6 the equities on your client's behalf.

7 Mr. Tatum, you have the right to address the Court
8 if you'd like to, but you don't have to say anything. Is
9 there anything you'd like to say?

10 THE DEFENDANT: No, Your Honor. I'm going to remain
11 silent.

12 MR. AMES: Your Honor, could I please --

13 THE COURT: You did think of something else.

14 MR. AMES: I did think of something else.

15 THE COURT: I knew you would.

16 MR. AMES: I just want to -- I don't want to talk
17 directly to everybody, but please know that there's --
18 Mr. Tatum is not speaking on the advice of me. It's my fault.
19 And, Your Honor, we're in that --

20 THE COURT: Look, Mr. Ames, I understand. He's
21 right to do that. He went to trial. I'm confident he will
22 appeal. I encourage that he appeal. He doesn't want to make
23 any self-incriminating statements that could be used against
24 him in the event that he's successful on appeal. And he's
25 afraid that if he doesn't incriminate himself, he's going to

1 upset the Court for not showing remorse. So no harm, no foul
2 by him not wanting to speak.

3 MR. AMES: Yes, Your Honor, and I appreciate that.
4 I certainly -- I've told Mr. Tatum this too, is that I would
5 never -- in the times I've been in front of you, that's always
6 been the case; that you do not hold that against anybody
7 and -- but I also want to just say it because -- in case those
8 who may not be privy to these proceedings and not understand
9 that -- why someone can't just say, hey, I really regret this
10 or I'm sorry.

11 THE COURT: Right. Understood.

12 MR. AMES: Yes.

13 THE COURT: Mr. Cervantes.

14 MR. CERVANTES: Thank you, Your Honor.

15 First I'd like to address the 3553(a) factors.

16 Next, there are some victims present in court and online that
17 would like to make some statements. Then I'll address
18 restitution and special assessments very briefly.

19 THE COURT: I hate to inconvenience all these
20 people. We've been here for -- is it noon?

21 THE CLERK: Yes.

22 THE COURT: We've been here for 2-1/2 hours -- not
23 you all, but we have -- and I think some of us would probably
24 appreciate a 15-minute break. I'm sorry to delay folks. But
25 not only do we want to get this right, but we don't want to be

1 uncomfortable while doing it, especially our intrepid court
2 reporter who has to pay attention at all times.

3 All right. So we're going to take a 15-minute
4 recess.

5 (Brief recess at 11:59 AM.)

6 (Court back in session at 12:10 PM.)

7 THE COURT: All right. Mr. Cervantes.

8 MR. CERVANTES: Thank you, Your Honor.

9 There's been a lot of discussion about voyeurism and
10 these videos that the defendant has made, and I'd like to
11 address that and show for the Court a sampling of some of
12 these videos. There's seven videos that the government has
13 identified. We would ask to move them into evidence unless
14 there is an objection. They're Sentencing Exhibits 5 through
15 11. These are videos that have come from the defendant's
16 devices showing the surreptitious recordings. And what's
17 important about them is the nature of the recording, the
18 extent to which he was doing this stuff, and it also addresses
19 some of the arguments that the defense was making.

20 THE COURT: All right. They're admitted.

21 (Government's Exhibits Nos. 5, 6, 7, 8, 9, 10, and
22 11 were received into evidence.)

23 MR. CERVANTES: Publishing Sentencing Exhibit 5.

24 (Government's Exhibit Number 5 was published.)

25 MR. CERVANTES: Publishing Sentencing Exhibit 6.

1 (Government's Exhibit Number 6 was published.)

2 MR. CERVANTES: I'm pausing it at 10 seconds to note
3 the sound of a scale and this is a scale where I've stopped.
4 And I would direct the Court's attention to the videos that
5 were introduced at trial, one of them of the patient showed
6 that she was being weighed at a scale.

7 THE COURT: I recall.

8 (Government's Exhibit Number 6 resumed.)

9 MR. CERVANTES: Publishing Sentencing Exhibit 7.

10 (Government's Exhibit Number 7 was published.)

11 MR. CERVANTES: Pausing at 18 seconds to show his
12 face there in the video.

13 || (Government's Exhibit Number 7 resumed.)

14 MR. CERVANTES: Publishing Exhibit 8.

15 || (Government's Exhibit Number 8 was published.)

16 MR. CERVANTES: Pausing at 7 seconds to note this
17 here, this is a white coat. This is another doctor that he
18 was working with.

19 || (Government's Exhibit Number 8 resumed.)

20 MR. CERVANTES: That one goes on for 3 minutes and
21 39 seconds and it's just conversation with the camera pointed
22 directly up her skirt.

23 Publishing Exhibit 9.

24 (Government's Exhibit Number 9 was published.)

25 MR. CERVANTES: I'll stop there for a moment to note

1 even in that last video we see the defendant using deception
2 to walk his victim to the car, having a conversation about
3 work; and without her even knowing, as she's reaching into the
4 car, he violates her and records what he records. So the
5 defense was talking about and a lot has been made about how
6 nobody at work ever came out and said anything. These people
7 don't know what's happened. And part of the problem is that
8 we can't identify who they are. The patient, what seems like
9 a patient that's being weighed at the scale, how old is she?
10 I don't know. Maybe a minor. Given the scope of his work, I
11 would assume that she is a minor. And who was she? I don't
12 know. We tried to find out who she was, but it was just not
13 possible. We ran into dead ends.

14 And so this notion that these are -- and the
15 suggestion is these are sort of one-offs or he didn't do it to
16 other people at work, that everybody at work thought that he
17 was, you know, upstanding, it's probably true. And it's all
18 related to this facade that he's put on in front of everyone,
19 even in front of his family about who he is versus who he
20 really is and nobody has known who he really is until this
21 case came to light.

22 And I understand it's very difficult for some people
23 to really accept the reality of what the defendant has done,
24 but he has preyed on so many women. As described in the
25 presentence investigation report at paragraph 17(f)(i),

1 there's a folder in his hard drive where there's 51 of these
2 videos of up-skirts. And to show that they're not just --
3 first of all, they're saved there, right, because they're
4 taken with a phone and they only get there if someone
5 purposefully takes them from the phone and organizes them and
6 puts them together. Plus there's 256 screen shots of those
7 videos showing the parts that were interesting to him.

8 And this isn't just about voyeurism, you know, and
9 going around recording people at work, potentially patients.
10 There may be other production charges there that we just
11 weren't able to develop. But there's also Sentencing Exhibit
12 10 shows this went beyond to even other bathroom videos. So
13 I'll publish Sentencing Exhibit 10.

14 (Government's Exhibit Number 10 was published.)

15 MR. CERVANTES: Stopping at 13 seconds, the Court
16 may recall, this is the -- looks like the same red bag that
17 was used to hide the phone that was placed in the bathroom.
18 In the video related to count two, the production video, there
19 is an orange sort of banner that looks like a bag where the
20 phone was hidden inside of. And here we see it again. And
21 this shows -- this is like the serial recorder who has an MO,
22 who has an operation. This isn't some fleeting moment of
23 interest in recording people. He's got a manner in which he
24 does this and he continues to do it.

25 (Government's Exhibit Number 10 resumed.)

1 MR. CERVANTES: He shows his face in this video just
2 like he did in the video in count two.

3 And fast forwarding to 5:49. I'm not going to play
4 that part, but it does depict -- a female does come into the
5 bathroom to bathe and he captures her as well. She does look
6 more developed in that video so I don't know if that's a
7 minor. But there are bathroom videos in addition to videos of
8 people at work.

9 And not just that, Sentencing Exhibit 11, this one
10 shows really the...

11 (Government's Exhibit Number 11 was published.)

12 MR. CERVANTES: This one shows the depravity of the
13 defendant stocking a woman at the grocery store with her two
14 kids in a grocery cart.

15 One moment, Your Honor.

16 That last one shows the nature and the extent -- the
17 nature and circumstances of the defendant's MO in recording
18 women in the community, females. He was indiscriminate.
19 We're not dealing with simply a peeping Tom or voyeur. We're
20 dealing with someone who's creating content. He's producing
21 this kind of content, whether it's minors or adults. And this
22 is digital content that can be stored indefinitely. It can be
23 shared. I understand that there wasn't evidence in this case
24 about distribution, but that's the problem. And we all know
25 that digital images remain indefinitely depending what you do

1 with them. And each time that the defendant watched these
2 videos, these victims are re-victimizing -- or being
3 re-victimized by the defendant's conduct.

4 So like it or not, let's call it -- whether you call
5 it a voyeur that's interested in looking at people or not,
6 when the voyeur records children naked in the bathroom, that's
7 child pornography. When the voyeur is trying to record the
8 private areas of a minor during a private session, that's
9 child pornography.

10 So the defense talked about what the statute was
11 designed to do and suggested that this production statute was
12 really designed to criminalize people for producing and then
13 sharing. And that's not true, as the Court knows. There's a
14 separate statute for the distribution of child pornography and
15 that's not what he was charged with. He's charged with
16 production. And the simple fact of producing child
17 pornography is what the statute is designed to criminalize.
18 It is designed to criminalize the exact conduct that the
19 defendant has done in this case.

20 The defense talked about only one video of
21 production, but that's not entirely true. There were three
22 videos of the patient who testified, Ms. F.L., at trial. And
23 I don't know how many other videos that he made of his
24 patients at work who are minors because we couldn't identify
25 other minors.

1 The defense also talked about not having a treasure
2 trove of images and videos here. And that's kind of ironic
3 because we don't have that mainly because he destroyed that
4 evidence and so he shouldn't get the benefit of the doubt
5 whatever doubt there may be. We know what the file names
6 were. We know in our experience what those files are. We
7 know in our experience that those files, when they have those
8 descriptions and you open them, they're not anime. They are
9 exactly what they purport to be. And we don't have the actual
10 videos and images listed in that exhibit that I displayed to
11 the Court at Exhibit 4 because it was destroyed by the
12 defendant, as the Court rightly found in the obstruction of
13 justice enhancement.

14 The defense also cited to another case called Bonds.
15 Bonds is not similar to this case. Bonds pled, number one.
16 He was not charged with production, number two. He pled to
17 possession. He got 84 months, but he pled.

18 A better comparison would be the case called Deritis
19 which is a case that this Court was involved in and this Court
20 sentenced Deritis to 50 years in February -- February 28,
21 2023, of this year. He produced. He was charged with
22 production. He was a hands-on offender, but he was charged
23 with production. And there were bathroom videos as well. He
24 got 50 years.

25 So what we're dealing with here is someone who is

1 indiscriminate about who his victims are. He has victimized
2 his cousins, his sister, minors, adults, a mom of two kids at
3 a grocery store, colleagues at work, patients.

4 And he told the FBI what he did with this material.
5 He masturbated to it. That was his own admission, with the
6 material that he collected and viewed.

7 He put himself in a position of trust. He put
8 himself in a position of trust with children to learn their
9 deepest, darkest secrets that they may not even be telling
10 their patients and he took advantage of that. And using that
11 he recorded at least one victim. He's been doing this for a
12 long time.

13 The pretrial sentencing report at paragraph 17(f) (i)
14 shows that the earliest surreptitious recording is dated
15 March 2008. This is a long-standing issue. And it's
16 escalated. It's escalated into his own profession to the
17 point where he was so bold that he would just videotape
18 anyone, even this lady that he walked to her car. And just a
19 quick snap and now that's recorded forever in his library to
20 do as he wishes.

21 The destruction of evidence is an aggravating factor
22 that the Court should consider. When faced with the reality
23 of what was about to happen, he didn't come clean. He
24 didn't -- which is his right. He doesn't have to -- he has a
25 right to a trial, which he took advantage of. But the reality

1 is that when he was faced with charges, he destroyed evidence.
2 And that is an aggravating factor. And we consider these
3 aggravating factors in determining what to do, what to
4 recommend to the Court, and whether there's anything
5 mitigating in the record that would suggest that he should get
6 a downward variance from the guideline range.

7 This is someone with means, intelligence, support of
8 a family. There's no reason for him to have done this. Which
9 makes him arguably even more dangerous, and doing it for such
10 a long time.

11 With respect to the need for the sentence imposed to
12 reflect the seriousness of the offense, to promote respect for
13 the law, and to provide just punishment for the offense, there
14 are few things that are more serious than preying on minors.
15 And it's not just the video of Ms. M.C., it's also the list
16 that shows exactly what he was interested in, the list of
17 10,000-plus files. What he did to Ms. M.C. was unfair and
18 inexcusable. He was family. She trusted him. She trusted
19 him also in the context of his role as a doctor. And he
20 violated that trust for his own sexual gratification.

21 The use of AI also shows the dangerousness of this
22 case and the importance of this case. It shows the
23 dangerousness he poses to society where he can take any
24 innocent photo of anyone, of someone's childhood, something
25 that happened years ago, and convert it into a sexual tool for

1 his pleasure. We only need to listen to the victim impact
2 statements to understand the impact the defendant has had on
3 their lives as a result of his selfish conduct.

4 The need for the sentence imposed to afford adequate
5 deterrence to criminal conduct. With regard to that factor,
6 this is an appropriate case to send a message of what happens
7 when people use technology to create child pornography. That
8 message should be strong and it should be clear that it will
9 not be tolerated. It will be prosecuted. And it's not
10 something that the government will look to very kindly.

11 The message should be sent. But even if the public
12 won't be deterred -- and I have been in the courtroom where
13 the Court has addressed that issue and determined -- or
14 questioned the deterrence impact of a sentence imposed in
15 this -- in any particular case. Are offenders actually
16 deterred by sentences? Even putting that aside, this Court
17 should deter this defendant from his conduct which he has been
18 doing for a long time and will continue to do unless this
19 Court sentences him to a lengthy sentence.

20 With regard to the need for the sentence imposed to
21 protect the public from further crimes of the defendant, no
22 woman, no matter their age, was safe around the defendant. A
23 guideline sentence is appropriate to keep him away from
24 further violating the women in this community.

25 Although the -- the guideline range is 720 months,

1 Your Honor. We think he should get every single day of that.
2 However, we're asking for 600 months -- it's a variance of 120
3 months -- because the defendant is 40 years old and a
4 600-month sentence, we believe, is appropriate. It's
5 sufficient but not greater than necessary to punish and deter
6 the defendant's conduct.

7 There's nothing mitigating about this case that we
8 can think of. The defense's argument seems to be minimization
9 of the type of conduct involved in this case, which the jury
10 decided emphatically that he was guilty of. And the
11 guidelines are what they are. Congress has told us what this
12 offense -- the sentencing commission has told us what this
13 offense should be -- what the guideline range should be for
14 this kind of offense. And so we would ask that the Court
15 impose a sentence of 600 months on the defendant which is the
16 equivalent of 50 years.

17 Your Honor, at this time the government has -- would
18 like to present the victim impact statements from six
19 individuals.

20 THE COURT: All right. Thank you.

21 MR. CERVANTES: The government will first ask
22 Ms. M.C. to make a statement.

23 MS. M.C.: Hello. Can everyone hear me okay?

24 THE COURT: Yes.

25 MS. M.C.: Firstly I would like to thank the Court

1 for their flexibility and accommodations in letting me give my
2 statement virtually today.

3 My name is M.C. and I was unknowingly videotaped by
4 the defendant when I was a child. He videotaped me
5 undressing, showering, and dressing again in the family cabin
6 that has had five generations of my family walk through its
7 doors.

8 We had one main cabin bathroom that he taped me in
9 and I wonder if I will ever be able to face returning to the
10 cabin that was once the safe space for much of my family.
11 Even if I make it back, I am prepared to find out that it has
12 been tainted for me. The defendant has ruined the sanctity of
13 the space my family has congregated at for generations, a
14 space I know will never be replicated.

15 The same summer I was videotaped, I confided in the
16 defendant about mental health issues I was having. His career
17 in psychiatry and my trust in him at the time made him the
18 ideal confidant. His trust in our family also led my parents
19 to seek his advice. I constantly wonder if he decided to
20 surreptitiously videotape me before or after he learned I was
21 struggling. Regardless, these events couldn't have been more
22 than a few days apart.

23 He kept and accessed the video he took of me until
24 it was seized in 2021. That summer he also began asking me
25 deeply personal questions with sexual undertones. Asking if I

1 was a masochist, if I liked to get hit, and if I liked getting
2 my hair pulled. He then pulled my hair. Because I was 15 I
3 thought all of this was fun between cousins.

4 I was first called by the FBI in September of 2022
5 and I believed it was a scam. I had no idea why they would be
6 calling me. I sat in a chair across from an agent and a
7 victim specialist who had several manila folders containing
8 evidence. I can't describe the moment when they showed me my
9 15-year-old naked body. First, I was confused. Second, I was
10 humiliated. Third, I was disgusted. And lastly, I felt
11 betrayed.

12 It is hard to even remember what happened that day
13 and for the days after. I remember calling my mom and trying
14 to explain and make sense of what happened. I remember not
15 being able to look at myself in the mirror for weeks. I
16 remember obsessing over my privacy in a way that I never had
17 before. Since that day I have felt uneasy showering or using
18 the restroom even in my own home and I often check for cameras
19 or anything else that could be out of place.

20 Since my involvement in this case came to light, my
21 entire family has been turned upside down. While parts of my
22 family have been incredibly supportive to me and the other
23 victims, other relatives promise that this trial of his peers
24 would prove his innocence. Messages from his family came
25 through the grapevine often, letting the victims and my family

1 know that he was an addict but definitely not a pedophile. It
2 did not matter that I was a child when he violated me. He was
3 such a successful doctor and this entire case was an
4 orchestration against poor Baby Day Day, the name family
5 members called the 40-year-old man indicted on these heinous
6 crimes. I was told over and over what happened to me was bad
7 but not bad enough to ruin his promising life. I must forgive
8 him and move on. There has never been responsibility taken
9 for his actions or even acknowledgment.

10 During the trial the defendant and his family
11 consistently sat outside the courtroom or courthouse during a
12 break in session making it impossible for me and the other
13 victims to move around, use the restroom or leave for the day
14 in peace. We were made to feel like a thorn in his side this
15 entire process.

16 On May 4 when we heard the jury's verdict, guilty on
17 all counts, I hoped that this was everyone's opportunity to
18 move on. Our justice system prevailed and we could move
19 forward. I could go home and get back into a normal routine
20 along with the other victims. I could begin the healing
21 process with the family that has had my back from day one:
22 blood relatives, non-blood relatives, family and friends.

23 I wish this was the case. Instead of that being
24 respected, the defendant's family has harassed me and the
25 other victims forcing us to keep reliving what has happened

1 over and over. I cannot listen to people tell me he was a
2 wonderful father before he was caught. I cannot listen to
3 people tell me over and over that there is this set of
4 alternate facts that we are not privy to that would have,
5 could have, or should have proven his innocence. We all
6 watched him set up the camera to tape me, my other cousin, and
7 his patient.

8 The constant campaign for the redemption of a child
9 sex predator is impeding me from healing. I have been told
10 that I cannot formulate my own opinions or thoughts, my mind
11 has been poisoned, and I will live a life void of happiness if
12 I do not forgive the defendant and move on. I have lost many
13 family members through the last year due to this, which was
14 extremely difficult to come to terms with.

15 I want to move forward on my own terms. I will not
16 forgive the defendant. Our family will not be the same moving
17 forward and I am at peace with that. There is no excuse for
18 what he did to me, my cousins, his ex-girlfriends, and his
19 patient. He needs to be held accountable for his actions. I
20 hope he doesn't have the opportunity to have any contact with
21 any children and endanger them in the future.

22 Thank you for listening.

23 THE COURT: Thank you.

24 MR. CERVANTES: The government would call E.H. who's
25 here in person. Up front, Your Honor? She would like to read

1 her statement. May she come to counsel table?

2 THE COURT: She may.

3 MS. E.H.: Hello, Your Honor. My name is E.H.

4 I dated the defendant in high school and accompanied
5 him to his senior prom. My memories of my whole high school
6 experience are tainted by this trial and the information it
7 has brought to light. It now disgusts me that as a child I
8 deliberately chose to spend time with the defendant. I feel
9 debased, horrified, ashamed, and unclean. I'm outraged that
10 he chose to create and keep such pictures of me. In this
11 digital age it is horrifying to realize that pictures of me,
12 innocent pictures, may be taken and twisted without my consent
13 for purposes that are illegal and disgusting. I am angry
14 because I feel I have been dragged unwillingly into an
15 untenable situation. I feel used as an object rather than
16 acknowledged as a person.

17 I feel that I cannot trust cameras and cameras are
18 literally everywhere in our lives. I was a child when the
19 photos were taken that have now been so horribly twisted. How
20 can this be that there exist pictures of me for which I did
21 not pose or consent? I did not in any way commit any poor
22 judgment that might result in such pictures, except that of
23 having previously interacted with the defendant. To put it
24 plainly, this mess is not my fault, but it is now part of my
25 life to deal with.

1 I now live with fear that some day these pictures
2 may surface in a public setting. These awful things never
3 should have existed in the first place. I live with the
4 feeling that there is something unclean very close to me that
5 I'm unable to wash away. I feel very strongly that wrong has
6 been done to me and that I have done nothing to deserve it.

7 Worse than for myself alone, I now also live with
8 the fear that my two children may some day be confronted with
9 the ugliness contained in these pictures. What if my two
10 children should some day be subject to harassment or worse
11 because of these pictures? If I did not deserve this, they
12 certainly did not deserve it. I'm trying to raise my children
13 to be compassionate, kind people who understand that every
14 life has dignity and value. As a parent I think it's
15 important to demonstrate the values that we hope to instill in
16 our children. That's one reason why I chose to travel to be
17 here physically in this courtroom. I took time off from my
18 work as a nurse, a bedside nurse, at the hospital to travel to
19 be here. I want to physically stand for basic human decency
20 and also for our American justice system.

21 During our time in high school, the defendant and I
22 both participated in a volunteer program called Youth Court.
23 Teenage volunteers like us would take on the roles of lawyers,
24 judge, and bailiff. Minors who had committed misdemeanors
25 would come before Youth Court and receive a sentence of

1 restitution in the form of community service and a letter of
2 apology. I mention all this because it was the culture at
3 Youth Court to take into consideration whether the offender
4 had admitted their guilt. If the offender appeared to realize
5 the negative consequences of their actions or the hurt that
6 they had caused to others, then the teen volunteers would hand
7 down a lighter sentence.

8 I mention this because it's ironic. One of the most
9 difficult things about this trial for me is how it has been
10 such a long, drawn out process and how staunchly the defendant
11 appears to believe that he has done nothing wrong or illegal.
12 The defendant had many chances during this time to admit his
13 guilt and seek to make amends. At no point did he choose to
14 do so. The outrage of being forced to publicly show my face
15 alongside these twisted pictures ought never to have happened.
16 Rather than making amends and attempting to heal some of the
17 hurt that he has caused, the defendant has spent his time and
18 energy attempting to skirt responsibility for his actions.

19 I would ask the Court that since it appears that the
20 defendant is still not ready to take responsibility for his
21 actions or try to make amends, that the Court please do so for
22 him. I would ask the Court for the maximum penalty for the
23 defendant. In this way I would hope that the defendant would
24 realize the gravity of his actions. The hurt and damage
25 caused by him are immeasurable, but some amends should be

1 made. I ask for restitution for myself. I also ask that the
2 Court to do all in its power to prevent other children from
3 being so harmed by the defendant in the future.

4 While I have previously stated, and it's true, that
5 I have been greatly impacted by the events of the past few
6 years leading up to this trial, and while my negative
7 experiences have been extreme, I also want to unequivocally
8 state that I am stronger than ever. By his actions the
9 defendant attempted to reduce me to an object, to less than a
10 person. His attempts have failed. I am stronger than that.
11 While I am afraid, I am able to rise above my fear. He has
12 not won. While I am disgusted, I am constantly finding beauty
13 and joy in life. While I'm outraged, I am standing calmly now
14 for justice. I will not be beaten down. I will not be broken
15 and I will not be silenced. I have passed through this
16 crucible and I will go on with my life. And I have a greater
17 understanding and compassion for all other women and children
18 so affected. I will rise above all this ugliness and I will
19 continue to turn toward the light.

20 Thank you.

21 THE COURT: Thank you.

22 MR. CERVANTES: Next, Your Honor, the government has
23 a statement written by Ms. S.B.J. May I read it?

24 THE COURT: You may.

25 MR. CERVANTES: "As a parent I am reminded daily how

1 quickly my children transform into young men, then adults, and
2 perhaps have their own families one day. We only get 18
3 birthday celebrations before they are off on their own, 13
4 first day of school pictures, a video of their first bike ride
5 without training wheels, one graduation day, and so on.
6 Special memories made and pictures taken to document these
7 precious times. A childhood photo of a milestone often
8 pinpoints the relationships that were important to you at the
9 time, friends and family who gather in the photo. A single
10 image or a single moment holds so much meaning.

11 "It's a very strange and unsettling realization that
12 as an adult woman in her 40s, I became a victim of child
13 pornography. These shocking and unfathomable words offered to
14 me over the phone in a scary and surreal phone call. The day
15 that I learned of David Tatum and what he did to me shook my
16 world. So many questions were unanswered. Who is he? Why
17 does he have a picture of me? Has he been stalking me? What
18 did he do with this picture? Who has seen it? I felt
19 violated, overwhelmed, and unable to do much else except to
20 cry and try to make sense of this shocking news.

21 "I then show up in life as the person I wanted to be
22 during this time. What David Tatum did to me has taken an
23 emotional toll on me. In the images that David Tatum
24 manipulated, I was 15 years old, the second oldest person in
25 the picture of six children assembled in front of my home for

1 a quick back to school picture before the bus picked us up.
2 David Tatum turned a childhood memory, a picture of me, my
3 siblings, and our closest family friends into a pornographic
4 picture. David Tatum took the excitement of a new school
5 year, the love and support of great family friends, and
6 closeness of me and my siblings and he created an image to
7 sexualize us children for his benefit. David Tatum took that
8 cherished memory and turned it into a new memory, one that
9 elicits nausea, fear, and overwhelming discomfort and distrust
10 within me.

11 "Upon learning what David Tatum did to me, I was
12 immediately negatively impacted. I hid in the bathroom to
13 make and take phone calls for fear of my children learning
14 about what had happened to me and their aunt. I experienced
15 sleepless nights, absent-mindedness and sadness. I cried a
16 lot. I missed work and I wasn't the leader or teammate I
17 promised to be in my business. My business suffered from the
18 emotional toll this has taken on me. My mind was and still is
19 occupied by what he did to me and others. I have lost some
20 trust in others and I fear how others will victimize me and my
21 children.

22 "I am afraid to show up in court today. I am afraid
23 of showing my face on screen today by participating virtually.
24 Will he get off on seeing me? Will he sexualize me? I fear
25 that when he created child pornography using my image online,

1 others will have access to that image as well. I fear
2 coworkers, family, community members or other pedophiles will
3 have access to this image.

4 "David Tatum's sentencing sets a precedent for other
5 perpetrators who use AI to create child pornography. He
6 should get the highest jail time possible to establish a
7 standard with which pedophiles using AI are held to in the
8 future. Images of children and AI technology are very
9 accessible on the internet so I believe this type of crime
10 should be addressed with firm repercussions from the courts.

11 "I have also lost some trust in medical
12 professionals because of David Tatum. In addition to jail
13 time, I hope that the courts will revoke his medical license
14 or any credentials that will allow him access to children in
15 the workplace. He should be placed in the National Registry
16 for Sex Offenders and any other state or national system that
17 protects children from pedophiles. The repercussions of his
18 actions on my life are significant and I hope to stop this
19 from happening to other children. It makes me sick to my
20 stomach to know that he had access to children in his daily
21 life at work as a child psychiatrist. I want justice for my
22 sister, for my friends, for myself, and for the other victims
23 David Tatum has impacted.

24 "Sincerely, S.J."

25 Your Honor, may I read the statement of Ms. L.C.?

1 THE COURT: Yes.

2 MR. CERVANTES: "A photo that Mr. Tatum had altered
3 for the purpose of pleasuring himself was of me, my sisters,
4 and our neighbors on our first day of school. We were a group
5 of children waiting for the school bus. It was a happy
6 memory. I was going into my last year in middle school and I
7 had only turned 13 a couple months earlier. Mr. Tatum has
8 taken that memory and turned it into something grotesque and
9 obscene. When I found out about his crimes against me and my
10 loved ones, it brought so much fear, anger, and confusion into
11 my life. Now, when I think of that time in my life, my middle
12 school years, he is always a part of my thoughts. When I
13 think of our friends who were in the photo with me, he is
14 always a part of my thoughts. He has inserted himself into my
15 relationship with my sisters whom he also violated.

16 "I fear artificial intelligence because of him and
17 when I see or hear of AI, there he is in the back of my head.
18 I fear social media because of him. I worry for my own
19 children's safety far beyond what I already feared prior to
20 knowing of his crimes against me, my loved ones, and those
21 that trusted him. I have been unable to see a therapist since
22 I learned of his profession and how he used his authority to
23 violate his patients.

24 "The saddest part is that I don't even know this
25 man. Have never met him before in my life. But he has

1 impacted it so much and in such a negative way. I often think
2 about how his actions have impacted those that trusted him,
3 both as a loved one and an authority figure. And knowing that
4 a man who is capable of such horrible and evil actions used an
5 image of me to pleasure himself makes me feel disgusted,
6 demeaned, and violated all the more. This man has committed
7 heinous crimes and the impact of his actions even to the least
8 of his victims has been immense. I wish that he had never
9 inserted himself into my life or the lives of my loved ones,
10 but he never gave me the choice.

11 "L.C."

12 Your Honor, at this time the government would ask
13 Ms. F.L. if she wants to make a statement.

14 MS. F.L.: Hello. I am Ms. F.L.

15 It started off like almost every other day, waking
16 up and barely able to breathe. My chest burned and I felt as
17 if I was drowning in my own body. Instead of going home after
18 school, finding a smoke spot was the intention to rid of the
19 troubles in my mind and at home. Smoking went from once in a
20 while to all the time. I couldn't eat without it. It started
21 to get complicated being a senior in high school needing a
22 substance constantly to calm the nerves. I couldn't imagine a
23 day without it. The pain seemed unbearable this day. I
24 couldn't live like this anymore. With no outlets and no one
25 to confide in, I found a ride to the hospital, my last resort.

1 I knew it went against my father's wishes. Everything was
2 fine; and if it wasn't, I was ungrateful.

3 Upon arriving to the hospital, I was terrified. I
4 couldn't notice my surroundings besides the overwhelm of an
5 overpopulated room. I wanted the help, but I was losing grip.
6 The heavy breathing and panic had activated. It felt worse
7 than ever. The desk asked for my name, but I couldn't speak.
8 It was late at night by the time I was admitted to 3900, the
9 child psych unit. From there I was assigned a room.
10 Exhausted from experiencing flight or fight for hours, I
11 passed out quickly.

12 Waking up I was in an unfamiliar place. The floors
13 slate and the walls dove. The light was too bright for my
14 eyes after the darkness of sleep and the air contained an
15 undertone of bleach. There was nothing in the room besides
16 the white bed I had slept on. There were many nurses and
17 other teens on the floor, but what set me apart was that I had
18 come voluntarily. Although I had come close to suicide many
19 times, I was in an extremely vulnerable position. Anyway, I
20 met with the treatment team daily throughout the duration of
21 my week's stay to discuss new practices of sober and healthy
22 living.

23 This is when I was assigned to Dr. David Tatum,
24 child psychiatrist. It was a good fit for me at the time. I
25 couldn't connect well with women due to my existing

1 abandonment issues stemming from my incarcerated alcoholic
2 mother.

3 Upon discharge I continued to see Dr. Tatum through
4 outpatient. He was transferring at the same time as me. I
5 thought it was meant to be and I trusted him. I had fallen
6 through the cracks for so long, felt alone for so long. No
7 one looked out for me, but I thought Dr. Tatum did. Finally I
8 had somebody. I never wanted more than a doctor/patient
9 relationship. Although the truth I'd hear eight years later
10 would come as a huge shock.

11 In February of this year I was contacted by the FBI.
12 They showed me a picture of under my dress. I was so
13 confused. I knew it was me immediately, but I didn't
14 understand where in the world this was coming from. When I
15 heard the doctor's name, my heart fell to the floor. The one
16 person that I thought had looked out for me had been violating
17 me. I felt so uncomfortable, skeeving from my own body.
18 Later I viewed a video of the defendant placing a video camera
19 underneath my dress. I could hear my personal information in
20 the background. I had no idea and I couldn't believe that.

21 I immediately questioned myself and my adequacy
22 considering my memory was so different from this. I doubt my
23 own judgment. I even looked for the doctor years later to
24 potentially help my traumatized sister who's in middle school.
25 God, how would I have ever lived with myself if that

1 potentially proceeded inappropriately.

2 I was, I am so betrayed. It's nearly
3 incomprehensible. Not only was this the one adult I thought I
4 had, but he was my psychiatrist. I confided in him. In his
5 profession he took an oath. My psychiatrist is supposed to be
6 someone I could put my faith into. And now I don't trust.
7 I'm skeptical of my own current therapist and anyone else's
8 genuine motives.

9 Nevertheless, now I spend my time talking of the
10 defendant instead of many other aspects in my life that need
11 to be addressed. I still wonder what I did. I've been
12 diagnosed with PTSD. This hits me at random times and
13 completely flusters me. It's been incredibly difficult to
14 write because I've been on constant high alert and solely
15 existing on survival mode.

16 When this first came up, I nearly felt as if I was
17 the senior in high school of the past, my emotions
18 unmanageable. I don't want to sit and think about what you
19 did to me because it shatters the little worth of myself I
20 have left. The truth is now no one was there for me. You
21 deceived me and you used me for your personal gain. I thought
22 you were great. But humans are multidimensional and you were
23 harmful to me as well. This has been detrimental, more than
24 an inconvenience to my life really. Every time it comes back
25 up my life seems to spiral. I have fallen back on old habits

1 looking for an escape. I failed all of my college courses for
2 the semester. Dealing with the FBI, having to travel,
3 testifying in court was all too much, too stressful. And you
4 are still taking from me. I was notified in February,
5 cooperating in April, flying in May. Received another call in
6 October. Now I'm here again in November. This is taking up
7 my life.

8 Because of what you did, I'll never have a male
9 psychiatrist again. And that's really too bad. The lack of
10 responsibility is another form of malpractice, insinuating I
11 might be lying.

12 At last I'm just glad I've had the opportunity to
13 tell this Court how the defendant's actions have impacted my
14 security, my safety, my self-worth, my self-confidence, and my
15 everyday life.

16 Thank you.

17 THE COURT: Thank you.

18 MR. CERVANTES: The government calls Ms. E.S.

19 MS. E.S.: The last time I took a shower without
20 thinking about being filmed was in 2002. I was 18. I've
21 spent my entire adult life checking every bathroom I enter for
22 a camera before I use it. I check hotel rooms, bars,
23 restaurants, airports, baseball stadiums, Disneyland. Even
24 the homes of my friends and acquaintances do not feel safe. I
25 have been looking for cameras so often and for so long that I

1 completely lost track of the fact that normal people don't do
2 this. It is humiliating. Just knowing I've been filmed
3 before is enough to make me want to climb out of my skin. I
4 can never loosen the grip of this intrusive thought that will
5 shower with me for the rest of my life. It is the kind of
6 filth you can never wash off.

7 This impact was particularly insidious. At 18 I
8 couldn't comprehend how problematic it was that there was a
9 tape out there of me and David's sister, both obviously
10 underage, taking turns showering after a swim. For a long
11 time I successfully compartmentalized my anxiety about
12 bathrooms and my adoration for David who I had known, loved,
13 and looked up to my entire life. He said he was sorry and I
14 believed him.

15 In November 2021 David confessed he was seeking help
16 for sex addiction and that he might be in some trouble. I
17 believe good people can make bad mistakes and still deserve
18 the chance to do better, so I offered to accompany him to
19 Kansas where he would undergo an assessment to determine his
20 fitness to remain a licensed physician. I thought I was
21 supporting my cousin on his tenuous first steps toward
22 recovery.

23 This impact hit harder. While I did not know the
24 breadth of David's crimes on the Kansas trip, David did. Days
25 after I had returned home, I still felt deeply unsettled. In

1 hindsight, I can see the sudden and stark incongruence between
2 David's words and his actions. He was not humbly seeking help
3 for an illness, but, rather, looking to do or say whatever it
4 took to beat the test and get back to work. I now know the
5 breadth of David's crimes and when I think too much about the
6 Kansas trip, I feel physically ill.

7 By far the most damaging impact of David's crimes
8 has been the impact to our family; specifically, to my
9 relationship with his sister who is my lifelong best friend.
10 We have watched our family disintegrate into something
11 unrecognizable. One of our most beloved and vocal members
12 remains heavily in denial. David does not grant his family
13 peace. Instead, he doubles down and fans the fire.

14 My best friend and I have talked to each other
15 nearly every single day about every single thing for more than
16 25 years. She is now stuck in an impossible situation that
17 shows no signs of improving. We are distant, reduced to
18 superficial pleasantries as we each try desperately to protect
19 the other from further harm. We are being torn apart through
20 no fault of our own and it is destroying us. The agony is
21 indescribable and it feels like part of me has died.

22 For over a year I was included in regular email
23 blasts which detailed David's plight as an unfairly maligned
24 victim of a vengeful ex. It is a special hell to be a victim
25 reading about how wonderful your victimizer is. It became so

1 unbearable I sent an impassioned plea to my entire family
2 begging them to see the truth and accept it. Even with all
3 that I have lost as a result, I do not regret sending that
4 email.

5 The response was swift and cruel. Behind my back
6 the family was cautioned that I'm extremist and toxic. They
7 were encouraged to stop talking to me all together. I was
8 accused of influencing other victims with my hatred, as if
9 they were incapable of having their own feelings about their
10 victimization. I was publicly shamed and called severely
11 mentally ill for spreading lies about David. I was scary and
12 demented, an angry woman hell-bent on revenge. Nobody spoke
13 up for me. And this is the narrative that persists to this
14 very moment. David is a victim and I'm the problem.

15 David violated my sense of privacy and safety
16 forever and he has irreparably destroyed my family. I've come
17 a long way since 2002. I have learned that when someone shows
18 you who they really are, you should believe them. David
19 continues to inflict pain despite knowing how much pain he has
20 already caused.

21 I hope the Court considers just how far David still
22 has to go in his recovery and provides him the opportunity to
23 engage in meaningful treatment for his attraction to minors
24 and voyeurism. But above all, I hope the Court considers a
25 sentence that ensures David cannot hold a position of

1 authority over a child ever again.

2 Thank you.

3 THE COURT: Thank you.

4 MR. CERVANTES: Your Honor, just a few words on
5 restitution and the special assessment.

6 THE COURT: I was going to ask where we stand on
7 restitution.

8 MR. CERVANTES: On restitution we're almost there.
9 Out of the six victims, we have requests from -- finalized
10 requests from five and so just one is pending. I have
11 discussed this with defense counsel. He's aware. And we'll
12 try to work it out, but we do ask the Court to set the
13 restitution hearing for 90 days from now just to have more
14 time to finalize that. We anticipate finalizing it well
15 before the 90 days.

16 THE COURT: That impacts any consideration of the
17 special assessments as well.

18 MR. CERVANTES: Yes, and I was about to get to that,
19 Your Honor.

20 So I think the Court can take into account that four
21 of the victims are asking for the minimum which is 3,000. So
22 that's \$12,000. And the one that's pending I don't think is
23 going to be much more than that. So it would be 12,000 plus
24 the pending request for restitution.

25 So unless the Court has questions about that, I'll

1 move on to the special assessment.

2 THE COURT: All right. Please.

3 MR. CERVANTES: So with regard to the special
4 assessment, the government is asking that the Court issue an
5 order of \$50,000 in total for counts one, two, and three. As
6 the Court knows, the Court has to consider the factors in
7 3553(a) and 3572. The government reincorporates its previous
8 arguments with respect to 3553(a). And with respect to
9 3572(a), the first, second, and fourth bullets of that
10 subsection are particularly relevant and important for the
11 Court's consideration we think.

12 The first one with regard to the defendant's income,
13 earning capacity, and financial resources has been pretty
14 obvious throughout the trial, the PSR as well, given his
15 profession. I recognize he probably won't practice again, but
16 he's extremely talented and intelligent.

17 And with regard to financial resources, the
18 supplement to the PSR confirmed that the sale of the marital
19 home happened last month and so there's a significant amount
20 of money there that the defendant will have access to in
21 addition to his own bank accounts which are detailed in the
22 PSR.

23 With regard to the burden that the fine -- the
24 special assessment will impose upon the defendant, we believe
25 that it is appropriate and that it will not -- it is \$50,000,

1 but it won't burden him to the extent that he won't be able to
2 do anything else in his life given the resources that he has
3 access to.

4 And the fourth factor is the one that I think the
5 Court was alluding to, whether restitution is ordered and the
6 amount of that restitution. I think ultimately the
7 restitution -- 12,000, plus the pending victim -- is not going
8 to go beyond 50,000. I think it's going to be a lot closer to
9 12,000, but I don't know that for sure yet.

10 THE COURT: I think I also read that of the proceeds
11 from the recent sale of the marital home, his intention was to
12 set aside a hundred thousand of his share of that for the
13 upkeep of his daughter.

14 Am I remembering that correctly, Mr. Ames?

15 MR. AMES: I don't remember the exact number, Your
16 Honor. I'll have to ask about that. But that's correct. So
17 there was a joint bank account that the wife took into her
18 possession when this all got started. That was roughly a
19 hundred thousand, I think, a little bit more than that. He
20 hasn't requested that back in general and has allowed that to
21 be part of the keeping of the upkeep of his daughter while
22 this has played out over the last couple of years. But that
23 was essentially the primary account that the couple had.

24 There was some, you know, money in equity in the
25 house which did sell last week. I sent the probation office

1 some documentation of that. Those funds are being held in a
2 trust account currently by, to my understanding, his wife's
3 attorney pending resolving their equitable distribution and
4 divorce.

5 But I can tell the Court that I've spoken with
6 Mr. Cervantes today. Mr. Tatum is more than willing to make
7 sure that the restitution is paid in the short-term when that
8 process goes through and distributed. I've explained to him
9 the order of operations and sort of how these funds go out and
10 that the restitution is right towards the top. And so I think
11 there can be an arrangement, particularly with the sale of
12 that house. I believe the total proceeds are around 360ish
13 thousand. Obviously that's marital, not taxed yet, I presume,
14 and split in some fashion. So it's not all his, but there
15 will be some that can go to that purpose.

16 There is also the consideration, obviously, Your
17 Honor, that this is a case where he has a daughter that's 5
18 years old that he loves very much. And we know for certain
19 it's 15 years either way and he is not going to be a person
20 that is in her life while she is a minor and able to take care
21 of her the way he could before. The ability for him to
22 support his daughter and the child support that he can give to
23 her is, frankly, limited to whatever assets he currently has
24 which have to go a long way and last until another 13 or 14
25 years. So I ask the Court to take that into consideration,

1 that it's probably either a lump sum or a trust situation so
2 that he can try to make sure as best as he is able to provide
3 for his daughter over the coming years.

4 And as Mr. Cervantes mentioned, I mean, I think it's
5 a foregone conclusion that his ability to earn money as a
6 professional practicing psychiatrist is over. His medical
7 license is not coming back. Whenever he is out and trying to
8 find work in the future some day, it will not be in that
9 profession and so there's limited means, basically.

10 But we understand the appropriateness of the
11 restitution and I have spoken to him. We will get that paid
12 quickly. And any remaining portion will have to be, I guess,
13 resolved as the divorce goes and the equitable distribution
14 goes, Your Honor. So that's kind of the overview.

15 THE COURT: All right. Anything else,
16 Mr. Cervantes?

17 MR. CERVANTES: No, Your Honor. Thank you.

18 THE COURT: Let me -- you can sit down, Mr. Ames.

19 Let me first talk to the victims in this case. I
20 know you're worried about these pictures popping up and the
21 re-victimization that would come from that. In fact, the
22 re-victimization of even having to worry about them popping
23 up, that's one of the things that informs sentencing in most
24 child pornography cases, most of which are different from this
25 one because most of them do involve sharing. There are these

1 desppicable photos and videos that are created, often by the
2 caregivers of these children, and the inhuman acts that are
3 done on them, and they're created for the purpose of sharing
4 and they're out there forever. And that's why a lot of
5 victims in these cases get notices from courts all over the
6 country notifying them that they are once again victims
7 because the government has identified their depictions of
8 abuse as having been once again seen.

9 That's not going to happen to you. There is no
10 reason to believe that the images involved in this case were
11 ever shared or ever can be shared. I don't know if you have
12 any more trust in me than you do in some others, but I have no
13 reason to believe that these videos were ever shared or ever
14 can be. So as traumatizing as all of this is, please don't
15 carry that with you the rest of your life.

16 Now, to get down to the considerations that the
17 Court is required to make in fashioning an appropriate
18 sentence.

19 The Court understands the childhood difficulties
20 that your lawyer addressed. And I don't doubt that you have
21 some sort of disease or defect that has influenced your
22 conduct in this. Indeed, people engaged in these offenses
23 have to be one of two things, evil or mentally ill, because
24 nobody else wants to look at this stuff. Now, that's an
25 explanation, not an excuse.

1 I have listened to the victims, of course. And it's
2 always moving. And you do have to take into account, you
3 know, what is the exact seriousness of this offense? Well,
4 you can hear some of it in their voices.

5 Now, I know that some of you folks will not be
6 satisfied for anything less than the longest sentence the
7 Court can give. I'm not going to do that. That's 60 years.
8 He's 41 almost, in weeks. It is a de facto life sentence.
9 And not only is a de facto life sentence unjust, I believe,
10 there does have to be room among these various defendants.

11 If he was a stepfather who sexually molested his
12 3-year-old stepdaughter, put it out on the internet and it was
13 shared for the rest of that girl's life, his guidelines would
14 be exactly the same. There's got to be a distinction. As
15 reprehensible as this conduct is, as many victims as it
16 created -- and when I say victims, I mean not just you all,
17 but even the women and perhaps girls who are completely
18 unaware that they've been victimized, but they have been.

19 The families have been victimized. I read the
20 letters before coming into court that were read today.
21 Mr. Tatum has destroyed this family, broken it up, perhaps
22 irreparably. You still have your supporters. I understand
23 when mothers or grandmothers or any other family member still
24 love you and will support you and be there for you. I don't
25 understand -- well, I do understand. But I caution that

1 ignoring reality and thinking that you're not guilty of this
2 offense, because you are, you're very guilty, and I hope
3 people can come to accept that and still love you. Being
4 guilty of this offense does not make you unhuman or unworthy
5 of love, but it shouldn't split your family up.

6 You know, one thing you can do if this case is
7 upheld on appeal and so your Fifth Amendment rights are no
8 longer necessary, I hope you will reach out to all of your
9 family and say, "I did this, I'm sorry. Please come back
10 together."

11 The Court also notes from paragraph 67 of the
12 presentence report that the defendant has been classified as a
13 medium risk group on sexual recidivism for males scale. So
14 the Court does have to consider that it's not that he's
15 unlikely to recidivate, nor is it, you know, some sort of
16 certainty.

17 The Court also does consider what are called
18 unwarranted sentence disparities among defendants, and that's
19 some of what I was talking about before: That these would be
20 the guidelines for people who committed a lot worse acts. I
21 am not minimizing anything that happened to you all, but I do
22 have to be a little bit realistic. These are nudes. These
23 aren't 3-year-olds being raped. I have to take that into
24 account. Some of these are not even you, as you know. It's
25 just your head. I know it's disturbing to look at that and

1 see an adolescent or preadolescent body on your head, but it's
2 not you. And that's different than some cases and I have to
3 make a distinction in those.

4 Now, a couple of cases have been pointed out
5 specifically to the Court. The case against Mr. Bonds, some
6 of the distinctions I think Mr. Cervantes pointed out. One,
7 he only had one count, I think, of possessing with intent to
8 view. I believe that's correct. And he did plead guilty,
9 acknowledging his guilt, showing some remorse, doing what he
10 could to make things better for those he had hurt. And he
11 hadn't created any child pornography. He was just downloading
12 it and viewing it. So he's less culpable than Mr. Tatum.

13 Mr. Deritis, who I think was also pointed out either
14 by -- I guess, Mr. Cervantes. One of the distinctions -- two
15 of the distinctions that come most to mind about Mr. Deritis
16 who did get a 50-year sentence, as I recall, he was a hands-on
17 offender with his -- I think it was his stepdaughter, not his
18 actual daughter but his stepdaughter. Creating photographs of
19 his own stepdaughter, including of a sexual hands-on nature.
20 And he testified and told some of the biggest whoppers you
21 ever heard in your life. Far beyond failing to show remorse,
22 he just lied his tail off. And he's worse than Mr. Tatum
23 because of that.

24 And so, you know, what the Court is supposed to do
25 is -- and this is in the statute -- impose a sentence that is

1 sufficient but not greater than necessary to apply all of the
2 factors that the Court is required to consider. And of
3 course, that's a great challenge. But I think in balancing
4 all the things we've talked about, I think I can achieve that.

5 So pursuant to the Sentencing Reform Act of 1984 and
6 *U.S. versus Booker*, it is the order of the Court, having
7 considered all of the 3553(a) factors, that the defendant is
8 hereby committed to the custody of the United States Bureau of
9 Prisons to be imprisoned for a term of 120 months on count
10 one, 360 months on count two to be served consecutively to
11 count one, 240 months on count three to be served concurrently
12 with counts one and two, for a total sentence of 40 years.

13 Forty years may be a de facto life sentence. I know
14 there are lots of ways you can earn time off in prison, but
15 you're going to be mid 70s and up probably when you're
16 eligible. I don't intend to give a de facto life sentence,
17 but I recognize that could be the rest of your life. But it's
18 still a just sentence under these circumstances.

19 It is recommended that he be incarcerated at FCI
20 Butner because they have excellent medical facilities and I
21 believe they have probably the best in the BOP for sexual
22 predator violators and can provide some treatment I hope that
23 will do some good here.

24 It is ordered that the defendant be required to
25 support all dependents from prison earnings while incarcerated

1 as outlined in the presentence report.

2 The Court further recommends that he be allowed to
3 participate in any educational and vocational opportunities
4 while incarcerated.

5 The Court calls to the attention of the authorities
6 that he has a history of mental health issues and recommends
7 that he be allowed to participate in any available mental
8 health treatment programs and also recommends that he
9 participate in a sex offender treatment program while
10 incarcerated.

11 Upon release from imprisonment, the defendant is
12 placed on supervised release for a term of 30 years. I think
13 that will cover the rest of your life no matter when you get
14 out. This term consists of 30 years on each of counts one,
15 two, and three, all such terms to run concurrently.

16 Within 72 hours of release from the custody of the
17 Bureau of Prisons, you are to report in person to the
18 probation office in the district into which you are released.
19 And while on supervised release, you shall not violate any
20 federal, state or local law, and shall comply with each of the
21 discretionary conditions of supervised release that have been
22 adopted by this Court and each of the standard sex offender
23 conditions of supervised release. The need for each of those
24 I hope is obvious to any reviewing court. But nonetheless, no
25 objections were filed to the anticipated imposition of those

1 conditions. The Court has reviewed them with respect to this
2 particular defendant and finds that each of them is necessary,
3 appropriate, and proper for this defendant's supervised
4 release.

5 As a special condition of supervised release, the
6 defendant shall participate in a mental health evaluation and
7 treatment program and follow the rules and regulations of that
8 program. The probation officer, in consultation with the
9 treatment provider, will supervise the defendant's
10 participation in the program, and the defendant shall take all
11 mental health medications as prescribed by a licensed health
12 care practitioner.

13 As a second special condition, the defendant shall
14 not communicate or otherwise interact with child victim 1,
15 either directly or through someone else, without first
16 obtaining the permission of the probation officer.

17 And as a final special condition of supervised
18 release, the defendant shall not engage in an occupation,
19 business, profession, or volunteer activity that would require
20 or enable him to have access to minor children without the
21 prior approval of the probation office.

22 Now, let me state with respect to the sentence,
23 obviously the Court had to resolve several objections to the
24 presentence report. And although the Court believes it got
25 each of those correct, the court of appeals might disagree.

1 But whatever the guidelines are, if the court of appeals
2 disagrees with this Court's decisions, this Court's sentence
3 of 40 years is what it considers the appropriate 3553(a)
4 sentence. Whether that is a downward variance from some other
5 guidelines, within some other guidelines, or an upward
6 variance of some other guidelines, the Court finds that that
7 is the appropriate sentence under 3553(a) and within the
8 statutory maximums.

9 It is ordered the defendant pay the United States a
10 special assessment of \$300.

11 The Court is not going to impose a fine since there
12 are restitution obligations as well as some upcoming special
13 assessments, and that a fine is unnecessary and perhaps
14 impossible.

15 But the Court has considered the financial
16 information appearing on pages 18 and 19 of the presentence
17 report and finds that in addition to an anticipated
18 restitution amount somewhere between 12,000 and let's call it
19 30 -- I can't imagine it being any more than that; but even if
20 it was a little bit more than that, it wouldn't matter. The
21 Court finds that he has the financial wherewithal without harm
22 to himself or to his other obligations to make the following
23 special assessments which are imposed.

24 A special assessment of \$5,000 per count pursuant to
25 18 U.S.C. Section 3014 and the provisions of the Justice for

1 Victims of Trafficking Act of 2015, and a special assessment
2 of 50,000 -- \$17,000 per count on each of counts one and three
3 and 50,000 on count two pursuant to 18 U.S.C. Section 2259A
4 and the provisions of the Amy, Vicky and Andy Child
5 Pornography Victim Assistance Act of 2018.

6 The Court will leave open for 90 days the question
7 of the restitution amounts to the particular victims in this
8 case.

9 The defendant shall make an immediate payment
10 towards monetary penalties in the amount of \$500.

11 If the defendant is unable to pay any monetary
12 penalty immediately, during the period of imprisonment,
13 payments shall be made through the Federal Bureau of Prisons
14 Inmate Financial Responsibility Program.

15 Upon release from imprisonment, any remaining
16 balance shall be paid in monthly installments of no less than
17 \$50 to commence within 60 days until paid off. Throughout the
18 period of supervision, the probation officer shall monitor the
19 defendant's economic circumstances and shall report to the
20 Court with recommendations as warranted any material changes
21 that affect the defendant's ability to pay any court-ordered
22 penalties.

23 Mr. Tatum, you can appeal your conviction, and I
24 encourage you to do so. You can also appeal your sentence.
25 But any notice of appeal has to be filed within 14 days of

1 entry of the Court's judgment. If you're unable to afford the
2 cost of an appeal, if you ask, the clerk of court will prepare
3 and file a notice of appeal on your behalf at no cost to you.

4 I suggest you discuss these rights with your
5 attorney, but do you understand them as I have explained them
6 to you?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: All right. This matter is concluded.

9 Mr. Tatum is remanded to the custody of the marshals.

10 The Court is in recess.

11 (End of proceedings at 1:28 PM.)

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1 UNITED STATES DISTRICT COURT
2 WESTERN DISTRICT OF NORTH CAROLINA
3 CERTIFICATE OF REPORTER

4
5
6 I, Cheryl A. Nuccio, Federal Official Realtime Court
7 Reporter, in and for the United States District Court for the
8 Western District of North Carolina, do hereby certify that
9 pursuant to Section 753, Title 28, United States Code, that
10 the foregoing is a true and correct transcript of the
11 stenographically reported proceedings held in the
12 above-entitled matter and that the transcript page format is
13 in conformance with the regulations of the Judicial Conference
14 of the United States.

15

16 Dated this 22nd day of December 2023.

17

18

19

s/Cheryl A. Nuccio

20

Cheryl A. Nuccio, RMR-CRR
Official Court Reporter

21

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